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R-87-39  
#20 (Cont of Appeal from Cycle III)

R-87-39  
#20 (Cont of Appeal from Cycle III)

Charlotte Diffendall - R-87-39  
NW/4 Eastern Blvd., 65' SW of the C/L  
15th Elec. Dist.

IN THE MATTER OF : BEFORE  
THE APPLICATION OF : COUNTY BOARD OF APPEALS  
CHARLOTTE DIFFENDALL : OF  
FOR RECLASSIFICATION : BALTIMORE COUNTY  
FROM ML-IM TO B.R. : NO. R-87-39  
NW/4 EASTERN BLVD. 65'  
SW OF C/L OF DIAMOND  
POINT ROAD  
15th DISTRICT

OPINION

This case comes before the Board on a petition for rezoning of a portion of the subject site from M.L.-I.M. to a B.R. zone to permit the development of this site into a shopping center. The property consists of some 31+ acres of which 13+ acres were rezoned to B.R. during the 1984 comprehensive map process and the remaining 18+ acres were zoned M.L.-I.M.. The original reclassification petition was a request to rezone this entire 18+ acres from M.L.-I.M. zoning to a B.R. classification. On July 30, 1986, the Petitioner, before the Board, submitted an amendment to his petition reducing the acreage involved from 18+ acres to some 3+ acres, and submitted a documented site plan which showed the details of its use. The case at that time was continued to permit all proper County authorities to review the amended proposal and to comment on same. All of this having been complied with, the case was heard this day, August 26, 1986, in its entirety. The subject property is located on the northwest side of Eastern Boulevard 65 feet southwest of the centerline of Diamond Point Road, in the Fifteenth Election District of Baltimore County.

The Board is of the Opinion that a brief history of the property and its present uses should be stated. The property is bounded on the east and north by Diamond Point Road, on the west by Oriole Avenue and along Eastern Boulevard on the south, and prior to the 1984 map process was zoned M.H. The present owners acquired this property through a series of purchases of portions of the subject site starting in 1932 and going through 1945. The

CHARLOTTE DIFFENDALL - #R-87-39

entire frontage along Eastern Boulevard is being utilized for a series of used car lots, auto repair businesses, salvage operations and junk car dealerships. The entire rear area away from Eastern Boulevard is being used for the storage of junk cars and trucks, as shown on Petitioner's Exhibit #13. All of these uses are nonconforming uses and are unattractively operated. On the south side of Eastern Boulevard is the Back River Sewage Disposal Plant. While this operation is well maintained and pleasing to the eye, there are obvious detriments associated with its use to nearby properties.

Petitioner presented testimony in this case from Wesley Guckert, Traffic Engineer, whose report was entered as Petitioner's Exhibit #8. Mr. Guckert testified that the plan as submitted would remove all existing individual access points along Eastern Boulevard and provide only two access points, one of which is presently signaled and would improve the traffic situation as it now exists. C. Richard Moore, Baltimore County Traffic Engineer, by letter, concurred.

Ms. Marsha Jackson, Executive Director of Eastern Development Corp., testified in favor of the petition. She testified that the present uses were undesirable, created a bad impression to anyone entering Essex along this route, noted the present renovation of the Back River Bridge and the number of potential jobs the project could create and stated that the Board of Directors of the Development Corporation approved this plan. Mr. Matko Chullin also testified that he supports the Development Corporation's approval.

Mrs. Charlotte Diffendall, property owner, testified as to the history of this site, its present uses and that her contract of sale to Mr. Joel Fedder was contingent on approval of the submitted plan. She also testified that all present tenants on the property were on a month by month rental

PETITION FOR ZONING RE-CLASSIFICATION  
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law

of Baltimore County, from an ML-IM zone to a B.R. zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property,

for the reasons given in the attached statement, a variance from the following section of the Zoning Law and Zoning Regulations of Baltimore County:

As to the reasons for this reclassification, see the attached Statement in Support of Petition for Zoning Reclassification.

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Joel Fedder  
(Type or Print Name)  
Signature: [Signature]  
Address: 514 N. Crain Highway  
City and State: Glen Burnie, Maryland 21061  
768-4100

Legal Owner(s): Charlotte Diffendall  
(Type or Print Name)  
Signature: [Signature]  
(Type or Print Name)  
Address: 1101 Macton Road  
City and State: Street, Maryland 21154

Attorney for Petitioner: Newton A. Williams  
(Type or Print Name)  
Signature: [Signature]  
Address: 204 W. Pennsylvania Avenue  
City and State: Towson, Maryland 21204  
823-7800

Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
Newton A. Williams  
Name: 204 W. Pennsylvania Avenue  
Address: Towson, Maryland 21204  
Phone No.: 823-7800

CHARLOTTE DIFFENDALL - #R-87-39

basic. Mr. Joel Fedder, Contract Purchaser, next testified. He noted his development experience and described his proposed use of the site in detail. Mr. Fedder also testified as to his attempts to gain his rezoning during the 1984 map process. His first request was Issue 7-50 asking for a 300 foot depth of B.R. along Eastern Boulevard. He then entered Issue 7-62 asking for B.R. for the entire 17+ acres. A preliminary study of the site indicated that the Issue 7-50 request for a 300 foot depth might be too little, and just prior to final adoption of the maps attempted to increase this request to a 600 foot depth from Eastern Boulevard. The County Council, after deliberation on these issues, granted B.R. for a depth of 400 feet from Eastern Boulevard and M.L.-I.M. on the remainder.

Mr. Fedder, having now done a survey of the site and prepared a documented site plan, testified that the project is only feasible if the additional 3+ acres, as shown, be rezoned B.R. to allow the repositioning of the two major tenants to meet all setback requirements and to provide proper parking. He also testified that the total estimated cost of this development, as proposed, would be about fifteen (15) million dollars.

Mr. George Gavrellis, Land Planner, was Petitioner's final witness. Mr. Gavrellis testified that he designed the zoning request and emphasized that this request was actually a downshifting of the zoning. He testified as to the design of the storm water system, the sewer system and especially noted that all of the critical area requirements have been complied with. He further testified that the present zoning only permits strip zoning along Eastern Boulevard, which is undesirable and a detriment to the whole area. In conclusion, it was his opinion that the County Council erred in not providing enough B.R. to permit shopping center development instead of strip develop-

DIFFENDALL TRACT  
Points of Error and Change

It was and is error to divide the Diffendall Tract between BR and ML-IM for at least the following reasons:

1. BR to only a limited depth encourages the non-conforming auto uses to remain on the Eastern Boulevard frontage, and these uses are old, unsightly, and not conducive to upgrading of the area.
2. On the other hand, all BR zoning on the entire tract would foster modern redevelopment of the property with parking in front and retail uses on the middle and rear.
3. This modern redevelopment of the property for retail uses under the present Development Regulations would upgrade this site, and eliminate thousands of junked cars from the site, as well as upgrading the frontage uses.
4. There is already enough ML-IM and MH-IM in the area, in fact too much, while there is not a sufficient amount of BR commercial zoning.
5. Manufacturing and commercial zones on the same property were not and are not a good mix, and the property should have been properly zoned all BR commercial.
6. The BR and ML-IM division is very difficult to use and was not and is not good planning.
7. BR and ML-IM was a forced compromise and was not and is not correct zoning.
8. For such other and further errors and changes as shall be brought out in the course of this case.



placed in ML-IM, perhaps the most correct zoning for the frontage since the earlier "E" commercial. We assert that ML-IM was correct in 1962 for the frontage, as would have been BR, since the ML zone was cumulative and permitted the commercial uses permitted in the three commercial zones, as well as certain light industrial uses. Unfortunately, the commercial uses were removed from the ML zone by Bill 100 in 1970, was the first effective opportunity to remedy and review such sites being the 1971 zoning maps.

By virtue of Bill 100, the 1971 zoning of primarily ML-IM became erroneous in that it did not permit the automotive commercial uses on the frontage any longer, as to upgrading or improvement, nor did it permit a junk yard by special exception, which requires MH base zoning.

As testimony for the petitioner brought out, and as was buttressed by Mr. Hoswell, the zoning of the property when it was in the Sixth Councilmanic District in 1976, was clearly not properly done nor thought out. Petitioners' exhibit 14, the Log for Issue 6-67 in 1976, shows that the property was being considered by the Council for D.R. 16, ML-IM, BM or MH, or some combination thereof. At its single marathon map adoption meeting for the Sixth District and all other districts in the Fall of 1976, at a very late hour of the night, the Councilman for the Sixth District first proposed the property for all BM, a proper zone, but could not get a second, due to feared

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adverse commercial impact on ailing Essex and Dundalk. The Councilman after a very pregnant pause then proposed all of the property for D.R. 16, and again, no other Councilman came to his aid with a second. Finally, in desperation, and in an effort to move the meeting along, the Councilman proposed MH zoning, which was seconded and adopted without debate or discussion. Clearly, all BM zoning, which would have allowed the then proposed Diamond Point Mall or the now proposed Diamond Point Plaza, was the Councilman's first choice and we believe the correct zone then and now, either BM or BR in its entirety.

It was testified that no request for a change of the MH zone was made on the 1980 zoning maps. Mr. Fedder in his testimony attributed the lack of a request to the fact that no one was then proposing to make a better commercial use of the entire property or any substantial portion thereof. Thus, the property remained MH until the 1984 zoning maps, when two maps requests were made and subsequently modified. However, before covering these two requests, we should consider what the real estate market has proposed for this property in more modern times, that is since the late 1960's.

Mr. Diffendall testified that in the late 1960s and early 1970s Mr. Peter G. Angelos, a Baltimore area developer and attorney, and a group proposed to develop the property as

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Diamond Point Mall; but they were thwarted in their efforts by the erroneous adoption of MH in the very ill considered way outlined above on the 1976 maps.

The next all commercial, suitors for the property, (and there never have been any potential purchasers for the existing junk yard and/or outdated commercial uses), was a group known as Dulaney Real Estate with offices here in Towson. Dulaney Real Estate wished to develop the property for a number of commercial uses, and once again required all commercial zoning for the entire thirty-one acres. Unfortunately, as was testified to by Mrs. Diffendall, negotiations with the Dulaney Real Estate group proved unsuccessful, and they dragged on virtually almost to the very end of the 1984 mapping process.

At that point very late in the 1984 mapping process, Mr. Fedder entered the mapping picture, as to required minimum depth of commercial zoning of 600 feet of BR. Mr. Fedder communicated very candidly and very sensibly with Councilman O'Rourke by means of his letter dated November 12, 1984, which was introduced as petitioners' exhibit 15.

By means of this letter, which according to Mr. Fedder's testimony was given to Mr. O'Rourke only a short time before the Council voted and adopted the maps in mid-November of 1984, Mr. Fedder on behalf of the property owner reduced the

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requested zoning from all of the tract represented by Map Issue 7-82, to six hundred feet of BR zoning across the entire frontage of the property.

Mr. Fedder went on to state in the letter that at least six hundred feet was needed in order to flexibly develop the Diffendall property with new and attractive, major anchor tenant uses to take the place of the existing uses. Mr. Fedder's inability to develop an appropriate site plan with the three hundred ninety to four hundred feet of BR zoning ultimately granted from the incorrect centerline, rather than from the property line, demonstrates the correctness of Mr. Fedder's quick but accurate analysis, although he had just entered the picture.

Mr. Fedder also testified, as did several other witnesses, that the reason that the request in Map Item 7-62 was cut back from all BR zoning, (which we maintain is still the correct zoning), to six hundred feet of BR zoning, is because that is what we were told we might get, and you take what you can get in such cases.

It should be carefully noted that there is no natural divider on the ground on the Diffendall property, be it at the three hundred foot depth, the four hundred foot depth, or the six hundred foot depth, upon which to base a zoning division line between BR on the frontage and ML-IM in the rear. Mr. Fedder chose the six hundred foot depth based upon his

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development experience, which has proven correct. It should also be noted that this revised, map request item 7-62 replaced the original request for three hundred feet of BR zoning in Map Item 7-50. The latter request simply sought to conform or legitimize existing roadside uses, with none deeper than three hundred feet. If the Council's purpose was to accommodate new major, non-competitive uses, four hundred feet will not do it as shown by Mr. Fedder's testimony.

For a number of reasons, in fact, the four hundred feet of BR zoning is counter-productive and erroneous, including the fact that there is no natural boundary on the ground. Furthermore, four hundred feet in depth, as has been proven by this case, is insufficient for upgrading and redevelopment of the entire property, particularly with a flexible parking and use site plan for major tenants as required. Furthermore, both three hundred feet represented by Item 7-50 and four hundred feet as ultimately granted are of an insufficient depth to remove the junked automobiles on the rear portions of the property, particularly thirty-one acres.

However, and perhaps most importantly, according to Mr. Gavrelis and Mr. Fedder and other witnesses, four hundred feet is insufficient and erroneous to guarantee the development of non-competitive, large tenant uses like those proposed at Diamond Point Plaza. As previously noted, Mr. Gavrelis testified that the thirteen acres of BR zoning granted by the

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1984 maps would accommodate one hundred thirty thousand plus square feet of strip commercial with multiple driveway, shall depth fastfood, retail and service uses, all of which would be directly competitive with both Essex and Dundalk. Furthermore, this strip shallow depth commercial would effectively cut off redevelopment at the rear tract, and serve to perpetuate the existence of the junked automobiles and other debris on the rear.

Mr. Fedder testified very clearly that the property cannot be developed with four hundred feet from the incorrect centerline of Eastern Boulevard for a number of reasons. First of all, as was proven to him by his development experience and by his realtor, Mr. Trout, the major tenants have required an abundance of viable, close and visible effective parking in front of the proposed stores, including the two satellite areas of general retail in the two BR areas sought in this documented zoning case. Mr. Fedder testified that parking in the rear or on the side of commercial buildings has not proven effective and usable because of perceptions of safety, etc. at his revitalized Colonial Village Shopping Center in Pikesville, where he is locked into an existing site plan.

Mr. Fedder went on to testify that Columbia Design and Daft-McCune-Walker had done a very excellent job of fitting the major tenants into the frontage BR, with Pace being allowed in the rear on the ML-IM area pursuant to Case No. 86-97-SPH,

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decided by this Board earlier. Were it not for the Pace decision, this case would not work, and the site problems and Council error would be accentuated. Mr. Fedder testified, as did Mr. Gavrelis, that all three of these major anchors tenants, Pace, Rickels and Zayre's, all have very clear cut building envelopes or footprints that they must have in order to effectively develop a store. As previously noted, Columbia Design and Daft-McCune-Walker have done an outstanding design in accommodating the great bulk of these envelopes within the existing BR area, with only minor incursions into the documented areas. These real footprints cannot be accommodated without at least the minor map "fine tuning" proposed in this case.

Mr. Fedder went on to testify, as did Mr. Guckert, that no one had foreseen the need for a twenty-five to thirty foot widening of Eastern Boulevard, and that this twenty-five to thirty foot major widening, coupled with the fact that zoning ran from the centerline of the 1954, smaller street (obviously unknown to Mr. Fedder and Councilman O'Rourke), further hampers development of the property. Since there was no design available, Mr. O'Rourke and the Council, as well as the Diffendalls, could not have known of the need for this widening, nor were the Diffendalls and Mr. Fedder in any way responsible for the incorrect configuration of Eastern Boulevard on the 200 scale zoning maps.

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Mr. Fedder also emphasized that development of the property for the proposed Diamond Point Plaza is not feasible from an economical or physical standpoint with the present zone boundaries.

Mr. Gavrelis from his investigation with the Planning Staff discovered that one of the major objectives of the 1984 zoning maps only providing BR to a depth of four hundred feet was to protect Essex and Dundalk from additional commercial competition. However, as we have pointed out, the four hundred foot strip has exactly the opposite effect in that a four hundred foot strip, thirteen acres in size could accommodate one hundred thirty-one thousand square feet of strip commercial, with smaller stores, fastfoods, all with multiple access points, very harmful to both Essex and Dundalk.

Bear in mind as well, that we are dealing with the adjustment of a line between two fairly close zones, namely, an industrial zone and a commercial zone, and we are not going from residential to commercial or industrial. In fact, the request of 2.733 acres of BR actually represents a downshift of this ML-IM property in the rear, since commercial is usually considered to be less intensive than a manufacturing zone. As Mr. Gavrelis says, the requested 2.73 acres represents a "fine tuning" of the 1984 maps.

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Furthermore, the petitioners in this case have reduced their request from on the order of seventeen acres of undocumented BR to 2.733 acres of documented BR, and they have been very open and honest with the Board about the rest of the tract.

Mr. Fedder has stated that, in fact, the plan as offered in evidence, petitioners' exhibit 3, is now in the process of being turned into a CR3 plan and is about to be filed. Thus, even outside of the documented areas, the Board has major assurances other than Mr. Fedder's word and good reputation that Diamond Point Plaza will be built as closely as possible to petitioners' exhibit 3, as working through the CRG and marketing processes will permit.

As for case support for the petitioners' position, we believe that the errors summarized above meet the requirements laid down in Boyce vs. Sembly, 25 Md. App. 43 at page 51 and following.

The Council could not have taken into account the actual configuration and location of Eastern Boulevard and Diamond Point Road, since they were both inaccurately and incompletely shown on the 200 scale base zoning map.

In granting about a four hundred foot depth of BR zoning from the incorrect centerline, the Council failed to take into account the required twenty-five to thirty foot widening of Eastern Boulevard. This twenty-five to thirty foot required

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improvement to Eastern Boulevard was not known to the Council, to the Diffendalls, to Mr. Fedder or anyone since it was only discovered by Mr. Guckert upon a detailed traffic analysis. The effect of the thirty foot widening is to make the four hundred foot minus granted even more erroneous, since three hundred seventy to three hundred seventy-five feet in depth is even less useable and more potentially directly competitive.

In Boyce, supra at page 51, some four cases are cited for the proposition that rezoning can be based upon an original misapprehension by the Council.

"Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. Bonnie View Club v. Glass, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Jobar Corp. v. Rodgers Forge Community Ass'n, 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); see Rohde v. County Board of Appeals, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964)."

There was a major misapprehension by the Council as to the major competitive detrimental effects of three hundred ninety to four hundred feet of BR zoning, (ie. competitive strip commercial detrimental to Essex and Dundalk) versus the benefits and correctness of the six hundred feet requested by Mr. Fedder in his letter of November 12, 1984 to the Council, petitioners' exhibit 15. If the Council's intent was to protect Dundalk and Essex from competitive strip commercial,

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then four hundred feet or less of BR had the exact opposite effect by encouraging up to one hundred thirty-one thousand square feet of new directly competitive fastfoods, small retail and service stores with a junk yard in the rear.

The efforts of Mr. Fedder and his planners at Columbia Design and Daft-McCune have proven that three major, non-competitive, anchor tenants cannot be accommodated in four hundred feet or less of BR zoning, with the widening from an incorrectly located centerline. See Rockville vs. Stone, 271 Md. 655, at page 662, wherein the Court of Appeals said:

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."

Finally, in Missouri Realty, Inc. vs. Ramer, 216 Md. 442, at page 449, the Court of Appeals stated that the usual reclassification situation is somewhat different wherein the reclassification is one from one residential subcategory to another, ie. even an upshift from R.G to R.G, the equivalent of from D.R.5.5 to D.R.10.5. Certainly this statement by the Court lends even more support to the requested downshift here from ML-IM, an industrial zone to BR, a commercial zone in two small, documented areas.

In summary we know the 1984 maps were in error for at least the following reasons:

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1. The base 200 scale maps were and are incorrect as to the two roads, Eastern Boulevard and Diamond Point Road and other actual ground conditions.

2. If the Council wanted to legitimate the existing roadside uses, it could have been done by means of granting three hundred feet requested in Item 7-50, but four hundred feet, if meant to accommodate new uses, will not do so, and is erroneous.

3. The objective of new BR zoning was to suit new major, non-competitive anchor tenant uses not harmful to Essex or Dundalk, and four hundred feet has exactly the opposite effect, as noted.

4. The four hundred feet depth would only accommodate highly competitive and injurious, minor strip commercial stores, directly contrary to the Council's imputed intent.

5. The BR zone is less than the ML-IM zone and represents a "fine tuning" to accommodate large tenant, non-competitive uses, like those proposed.

6. The granted four hundred feet of zoning would compete with Essex without completely cleaning up the gateway to Essex, as will the proposed staff and Planning Board and Administration endorsed Diamond Point Plaza.

#### CONCLUSION

For all of these reasons, we respectfully ask that the Board of Appeals, in recognition of the map errors noted, and

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in recognition of the major benefits, (including the removal of all of the older uses, both front and rear, and all of the junked automobiles), as well as major, non-competitive benefits to both the Essex and Dundalk areas, including the positive benefit of the clean-up the gateway of Essex, that the requested 2.733 acres of documented BR be granted by this Board, as requested by the petitioner/land owner, Charlotte Diffendall, and by the petitioner/contract purchaser and prospective developer, Mr. Joel D. Fedder.

Respectfully submitted,  
Nolan, Plumhoff & Williams,  
Chartered

*Newton A. Williams*  
Newton A. Williams

#### CERTIFICATE OF SERVICE

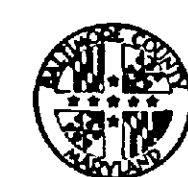
I HEREBY CERTIFY, that on this 15th day of September, 1986 a copy of this foregoing Petitioners' Memorandum In Support of Requested, Limited, Documented BR was mailed, postage prepaid to: Phyllis C. Friedman, Peoples Counsel and Peter M. Zimmerman, Dupty Peoples Counsel, Court House, Towson, Maryland 21204.

*Newton A. Williams*  
NEWTON A. WILLIAMS

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& WILLIAMS,  
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0044A

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County Board of Appeals of Baltimore County  
Room 200 Court House (Hearing Room #218)  
Towson, Maryland 21204  
(301) 494-3180  
August 1, 1986

#### NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. R-87-39

CHARLOTTE DIFFENDALL

NW/4 Eastern Blvd., 65' SW of c/l  
of Diamond Point Road

15th District

ML-IM to B.R.

SCHEDULED FOR:

TUESDAY, AUGUST 26, 1986, at 10 a.m.

cc: Newton A. Williams, Esq. Counsel for Petitioner

Charlotte Diffendall Petitioner

Joel Fedder Contract Purchaser

James E. Kraft

Phyllis C. Friedman People's Counsel for Balto. County

Milton and Ida Tancibok

Mrs. Nancy M. Leiter

Russell Mirabile

Matko Lee Chullin

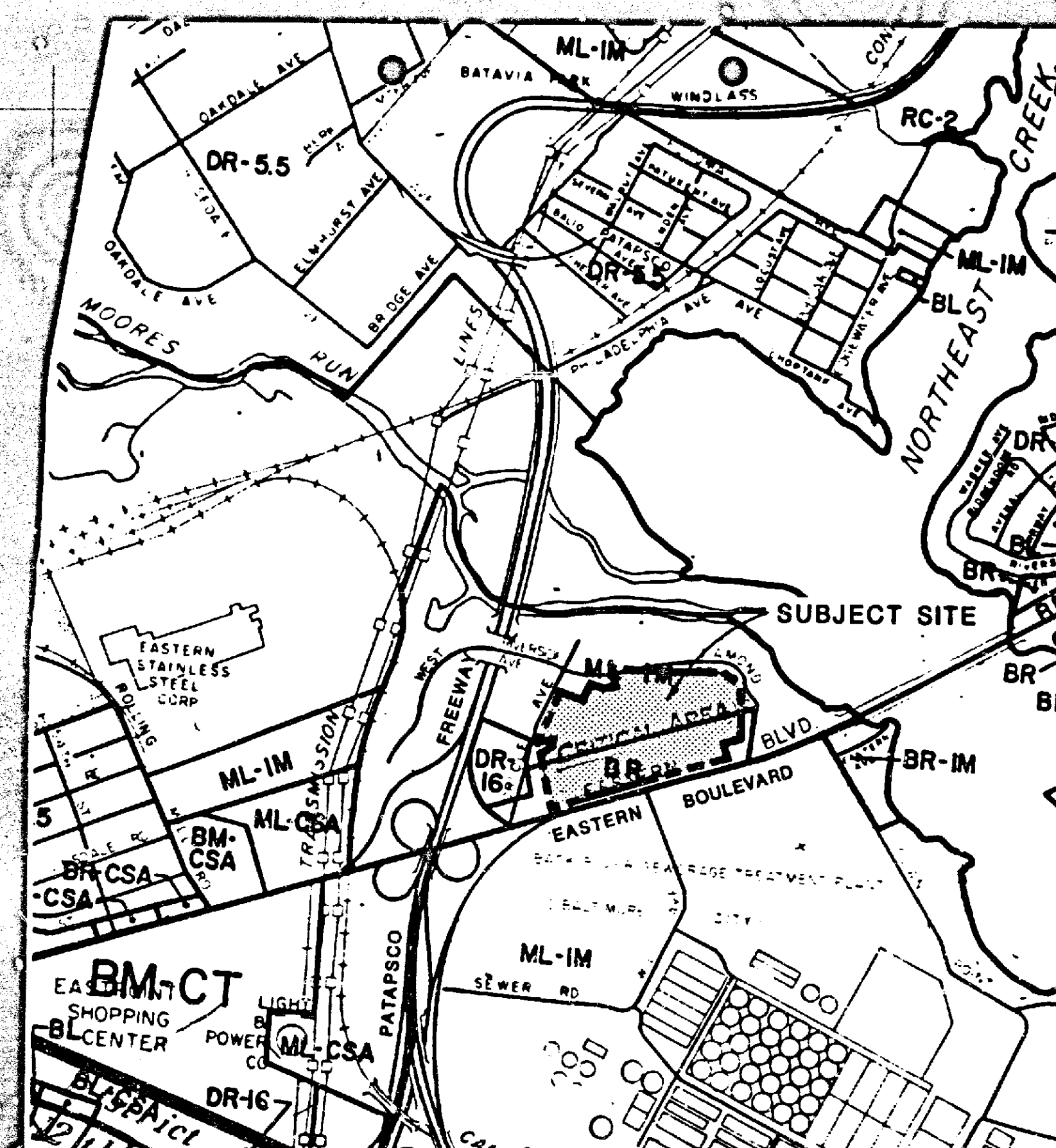
Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James E. Dyer



ML-IM TO BR RECLASSIFICATION REQUEST  
PORTION OF ZONING MAP 4B

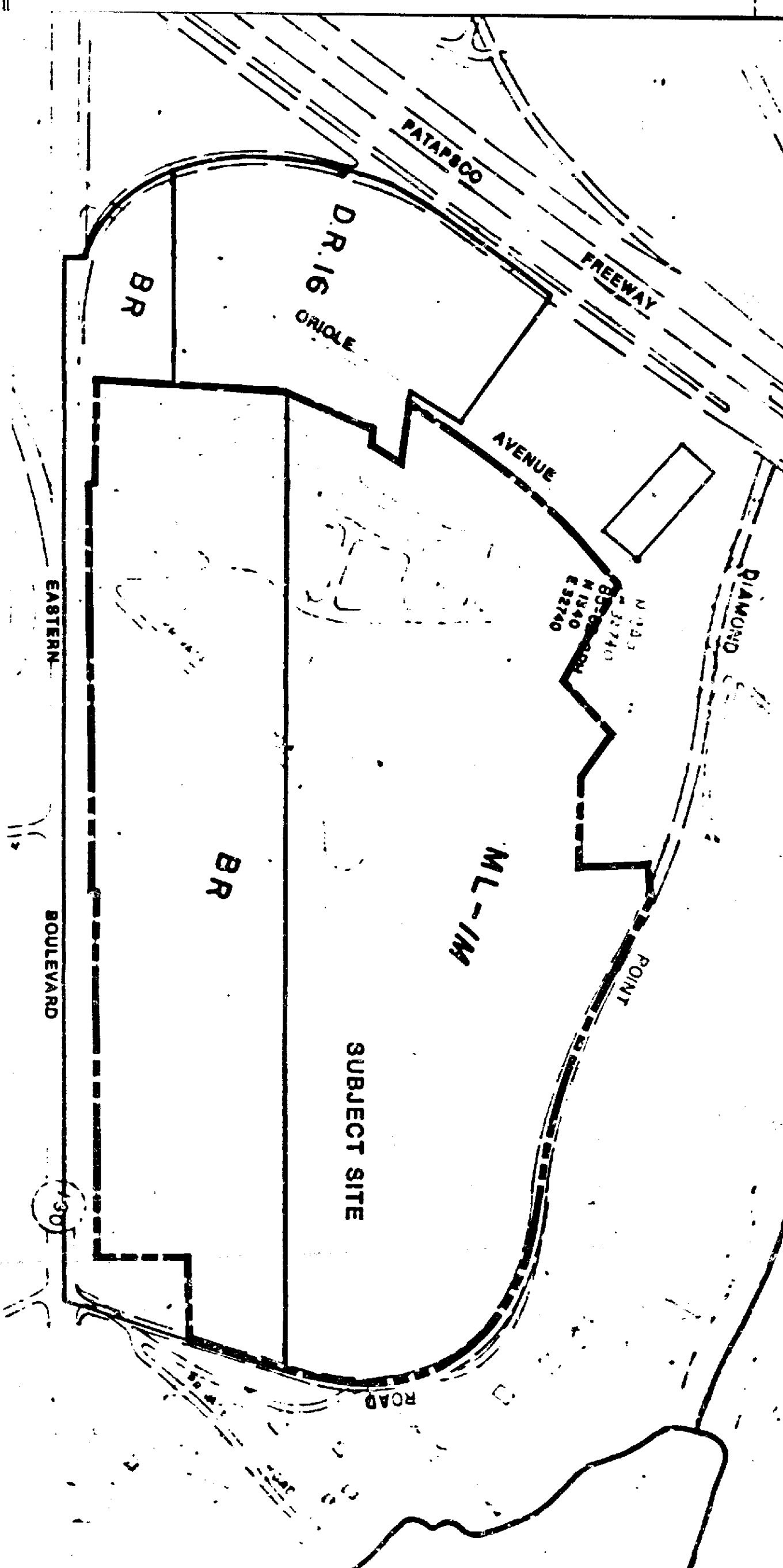
J.C. 85122

SCALE: 1" = 1'

J.C. 85122

ML-IM TO BR RECLASSIFICATION REQUEST  
PORTION OF MAP NE-1F

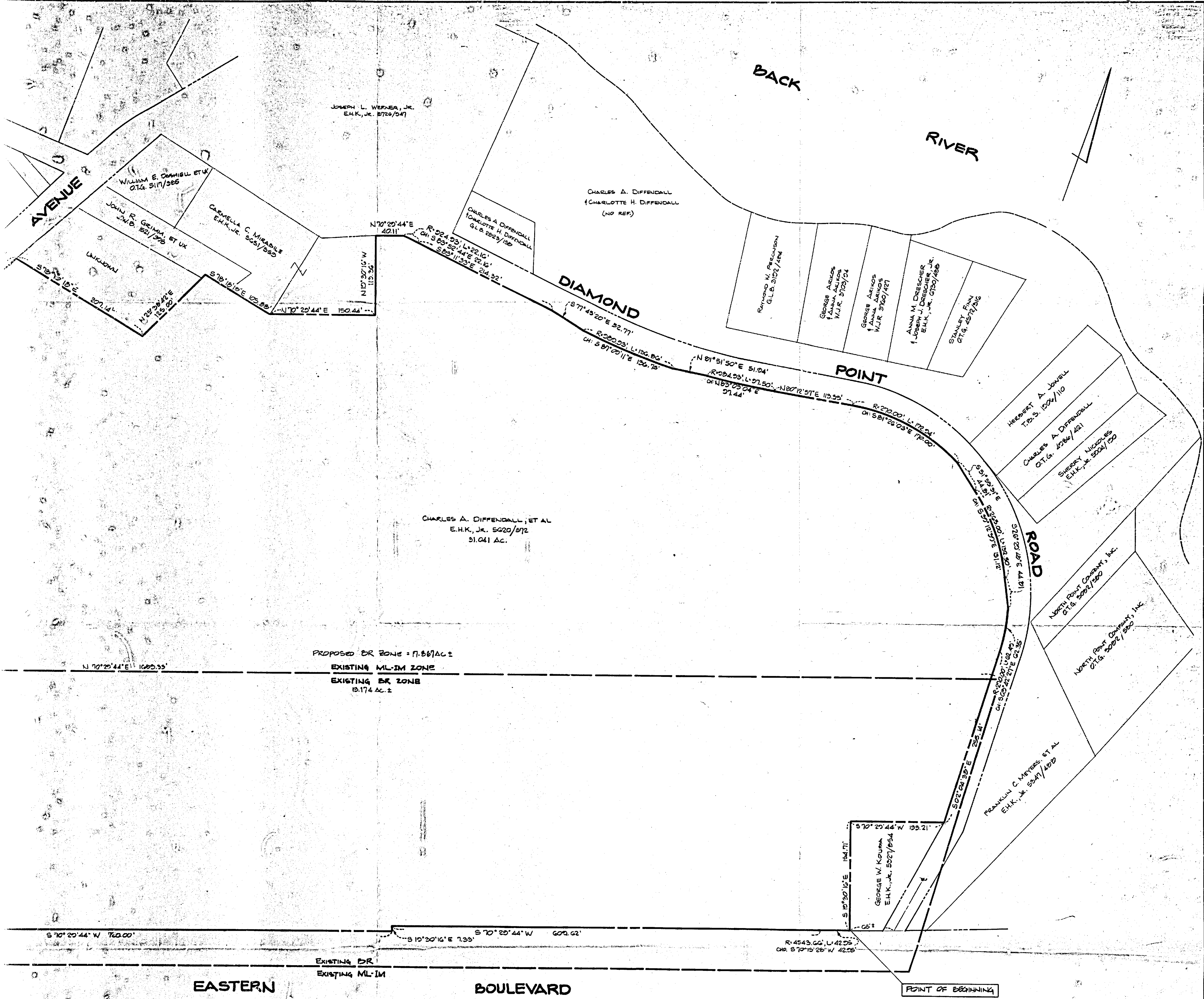
SCALE: 1" = 200'



APR 14 1987

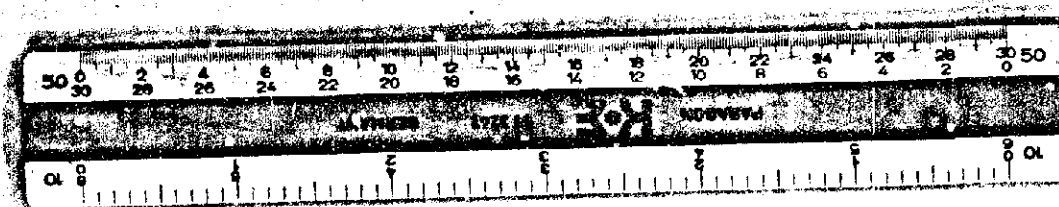
June Holmen, Secretary





EASTERN

BOULEVARD

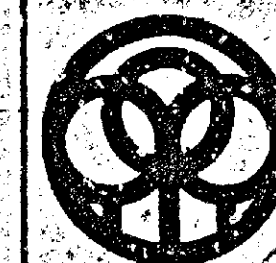


Robert B. Smith

PLAT TO ACCOMPANY  
PETITION  
FOR  
ZONING RECLASSIFICATION  
ML-IM TO BR

15<sup>TH</sup> ELECTION DISTRICT  
BALTIMORE COUNTY, MD.  
89122 1"=50' FEB. 27, 1996

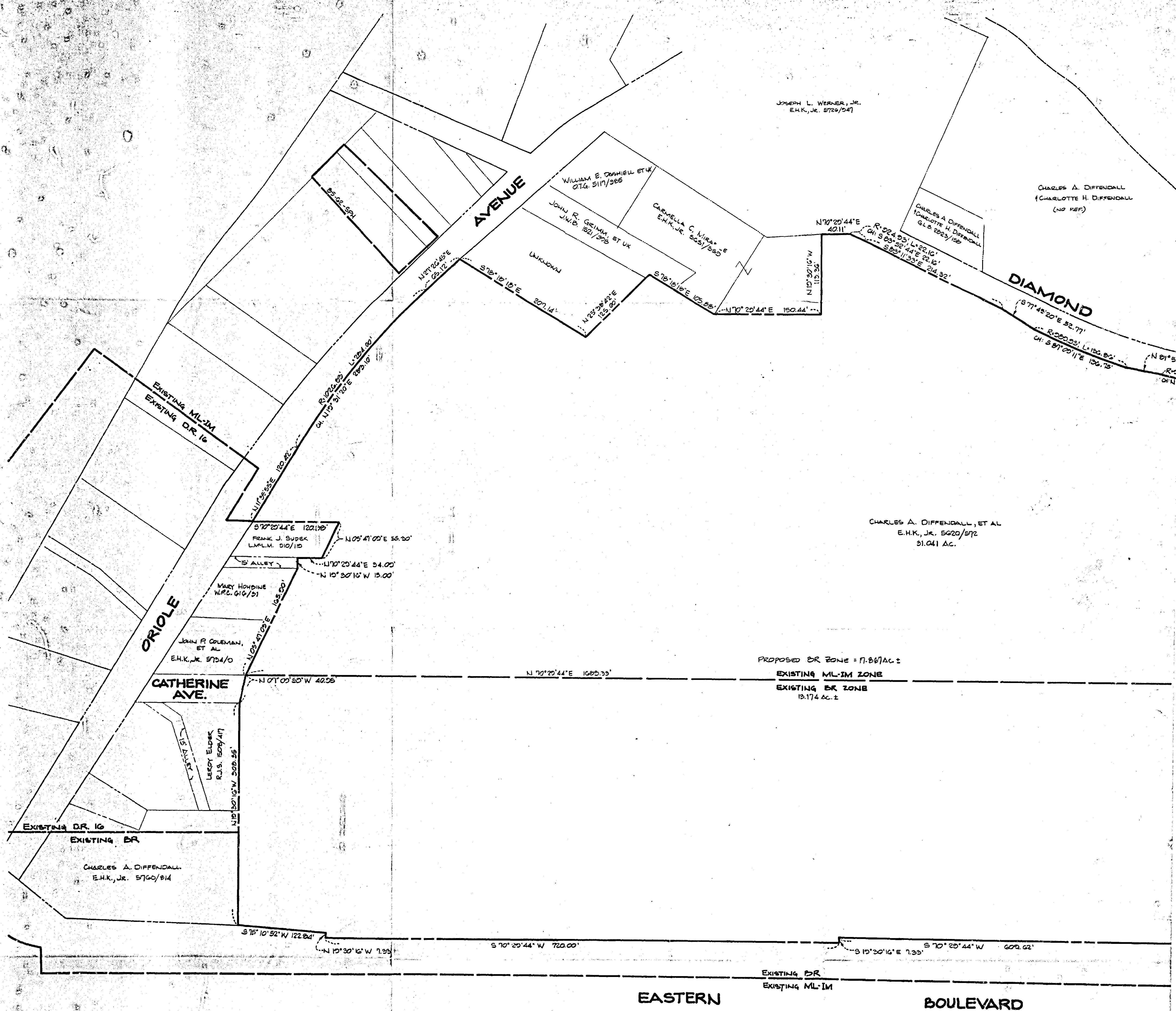
CRITICAL AREA  
III-20  
PRINTED  
FEB 23 1996  
CMT/MCLINE/WALKER, INC.



DAFT · McCUNE · WALKER · INC.  
LAND PLANNING CONSULTANTS  
LANDSCAPE ARCHITECTS  
ENGINEERS & SURVEYORS  
300 E. PENNSYLVANIA AVE.  
TORRISON, WY. 82434  
TELEPHONE (304) 246-2222

THIS PLAT HAS BEEN PREPARED FROM DEEDS AND OTHER  
TITLE SOURCES AND DOES NOT REPRESENT A SURVEY OF THE PROPERTY.







PETITION FOR RECLASSIFICATION

LOCATION: Northwest Side of Eastern Boulevard, 65 feet Southwest of the Centerline of Diamond Point Road

PUBLIC HEARING: Wednesday, July 30, 1986, at 9:30 a.m.  
Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

To reclassify the zoning status of property from an M.L.-I.M. Zone to a B.R. Zone

All that parcel of land in the 15th Election District of Baltimore County

17.867 Acres Parcel for  
Zoning Reclassification  
North Side Eastern Boulevard between Oriole Avenue  
and Diamond Point Road  
Fifteenth Election District, Baltimore County, Maryland

Beginning for the same at a point on the northerly right-of-way line of Eastern Boulevard, said point being situated 65 feet more or less from the intersection formed by the centerline of Diamond Point Road and the northerly right-of-way line of Eastern Boulevard and running thence along the northerly side of Eastern Boulevard the six following courses and distances viz; (1) westerly by a line curving to the right 42.95 feet (said curve having a radius of 4543.66 feet and a chord bearing South 70 degrees 13 minutes 28 seconds West 42.95 feet), thence (2) South 70 degrees 29 minutes 44 seconds West 609.62 feet, thence (3) South 19 degrees 30 minutes 16 seconds East 7.33 feet, thence (4) South 70 degrees 29 minutes 44 seconds West 720.00 feet, thence (5) North 19 degrees 30 minutes 16 seconds West 7.33 feet, and thence (6) South 75 degrees 10 minutes 52 seconds West

122.84 feet, thence leaving the northerly side of Eastern Boulevard and running the seven following courses and distances viz; (7) North 19 degrees 30 minutes 16 seconds West 308.35 feet, thence (8) North 07 degrees 09 minutes 59 seconds West 40.95 feet, thence (9) North 05 degrees 47 minutes 05 seconds East 165.90 feet, thence (10) North 19 degrees 30 minutes 16 seconds West 15.00 feet, thence (11) North 70 degrees 29 minutes 44 seconds East 34.09 feet, thence (12) North 05 degrees 47 minutes 09 seconds East 55.30 feet, and thence (13) South 70 degrees 29 minutes 44 seconds West 120.88 feet to the southeasterly side of Oriole Avenue, thence binding on the southeasterly side of Oriole Avenue the three following courses and distances viz; (14) North 11 degrees 35 minutes 55 seconds East 120.42 feet, thence (15) Northeasterly by a line curving to the right 284.00 feet (said curve having a radius of 1026.83 feet and a chord bearing North 19 degrees 31 minutes 20 seconds East 283.10 feet), and thence (16) North 27 degrees 26 minutes 45 seconds East 65.12 feet, thence leaving the southeasterly side of Oriole Avenue and running the six following courses and distances viz; (17) South 78 degrees 18 minutes 18 seconds East 207.14 feet, thence (18) North 25 degrees 38 minutes 42 seconds East 125.00 feet, thence (19) South 78 degrees 18 minutes 18 seconds East 105.88 feet, thence (20) North 70 degrees 29 minutes 44 seconds East 150.44 feet, thence (21) North 19 degrees 30 minutes 16 seconds West 113.36 feet and thence (22) North 70 degrees 29 minutes 44 seconds East 40.11 feet to intersect the south side of Diamond Point Road, thence binding on the south and westerly sides of Diamond Point Road the thirteen following courses and distances viz; (23) easterly by a line curving to the right 22.16 feet (said curve

Page 2 of 5

having a radius of 924.93 feet and a chord bearing South 83 degrees 52 minutes 44 seconds East 22.16 feet), thence (24) South 83 degrees 11 minutes 33 seconds East 214.32 feet, thence (25) South 77 degrees 45 minutes 20 seconds East 52.77 feet, thence (26) easterly by a line curving to the left 136.86 feet (said curve having a radius of 989.93 feet and a chord bearing South 87 degrees 09 minutes 11 seconds East 136.75 feet), thence (27) North 81 degrees 51 minutes 50 seconds East 51.94 feet, thence (28) Easterly by a line curving to the left 97.50 feet (said curve having a radius of 984.93 feet and a chord bearing North 83 degrees 03 minutes 04 seconds East 97.44 feet, thence (29) North 80 degrees 12 minutes 57 seconds East 113.33 feet, thence (30) southeasterly by a line curving to the right 172.94 feet, (said curve having a radius of 270.00 feet and a chord bearing South 81 degrees 26 minutes 03 seconds East 170.00 feet), thence (31) South 51 degrees 55 minutes 31 seconds East 44.81 feet, thence (32) Southeasterly by a line curving to the right 132.50 feet (said curve having a radius of 265.00 feet and a chord bearing South 39 degrees 12 minutes 39 seconds East 131.12 feet), thence (33) South 26 degrees 29 minutes 48 seconds East 44.81 feet, thence (34) Southerly by a line curving to the right 62.49 feet (said curve having a radius of 270.00 feet and a chord bearing South 08 degrees 42 minutes 27 seconds East 62.35 feet), and thence (35) South 02 degrees 04 minutes 38 seconds East

Page 3 of 5

255.14 feet, thence leaving the aforementioned westerly side of Diamond Point Road and running the two following courses and distances, viz; (36) South 70 degrees 29 minutes 36 seconds West 133.21 feet and thence (37) South 19 degrees 30 minutes 16 seconds East 154.71 feet to the point of beginning.

Containing 31.041 acres of land more or less.

Saving and excepting from the above described parcel 13.174 acres of land which are in an existing BR Zone.

Beginning for the same at a point on the northerly right-of-way line of Eastern Boulevard, said point being situated 65 feet more or less from the intersection formed by the centerline of Diamond Point Road and the northerly right-of-way line of Eastern Boulevard and running thence along the northerly side of Eastern Boulevard the six following courses and distances viz; (1) westerly by a line curving to the right 42.95 feet (said curve having a radius of 4543.66 feet and a chord bearing South 70 degrees 13 minutes 28 seconds West 42.95 feet), thence (2) South 70 degrees 29 minutes 44 seconds West 609.62 feet, thence (3) South 19 degrees 30 minutes 16 seconds East 7.33 feet, thence (4) South 70 degrees 29 minutes 44 seconds West 720.00 feet, thence (5) North 19 degrees 30 minutes 16 seconds West 7.33 feet, and thence (6) South 75 degrees 10 minutes 52 seconds West 122.84 feet, thence leaving the northerly side of Eastern Boulevard and running the two following courses and distances viz; (7) North 19 degrees 30 minutes 16 seconds West 308.35 feet, thence (8) North 07

Page 4 of 5

degrees 09 minutes 59 seconds West 40.95 feet to intersect the line dividing the land zoned BR and ML-IM as shown on the Comprehensive Zoning Maps for Baltimore County, thence running along said line, (9) North 70 degrees 29 minutes 44 seconds East 1683.33 feet, to intersect the above described 35th line, thence binding on a part of said 35th line and on the 36th and 37th lines, (10) South 02 degrees 04 minutes 38 seconds East 213.25 feet, thence (11) South 70 degrees 29 minutes 36 seconds West 133.21 feet, and thence (12) South 19 degrees 30 minutes 16 seconds East 154.71 feet to the point of beginning.

Containing 13.174 acres of land more or less.

The net area to be reclassified as BR zone is 17.867 acres of land more or less.

Being the property of Charlotte Diffendall  
as shown on the plat plan filed with the Zoning Department.

BY ORDER OF  
WILLIAM T. HACKETT, CHAIRMAN  
COUNTY BOARD OF APPEALS  
BALTIMORE COUNTY

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS  
FROM ML-IM TO BR ZONE  
NW/4 Eastern Blvd., 65' SW : OF BALTIMORE COUNTY  
of C/L of Diamond Point Rd.,  
15th District :

CHARLOTTE DIFFENDALL, Petitioner: Zoning Case No. R-87-39

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 10th day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esquire, Nolan, Plumhoff & Williams, Chartered, 204 W. Pennsylvania Ave., Towson, MD 21204; and Joel Fedder, 514 N. Crain Highway, Glen Burnie, MD 21061, Contract Purchaser.

*Peter Max Zimmerman*  
Peter Max Zimmerman

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT		No. 021822	
DATE 8/15/86	ACCOUNT R-01-615-000	MEMO RECEIVED AUG 15 1986 ZONING OFFICE	
AMOUNT \$479.96 Mr. Joel D. Fedder, The Fedder Co., 514 N. Crain Highway, Glen Burnie, Md. 21061		RECEIVED COUNTY BOARD OF APPEALS AUG 18 1986	
ADVERTISING & POSTING COSTS RE CASE NO. R-87-39 (Item No. 29, Cycle III - Approved Out of Cycle)		TER/hlt Enclosure	
B BCS*****479961a 3154F		cc: Joel D. Fedder Newton A. Williams, Esq.	
In accordance with Mr. Jablon's enclosed letter of August 7, 1986, please find a check in the amount of \$479.96 noted due to the Baltimore County Zoning Office.			
If you have any further questions, please contact the writer at (301) 768-4100.			
Thank you for your cooperation in this regard. Sincerely, <i>William E. Rosenblatt</i> William E. Rosenblatt, Vice President			



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

August 7, 1986

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/4 Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 29, Cycle III  
Case No. R-87-39 (Out of Cycle)

Dear Mr. Williams:

We acknowledge receipt of your letter of August 4, 1986, concerning this case. This letter is to further clarify the exact costs which are due this office in connection with this reclassification case.

IN CYCLE III COSTS - \$140.46 - for 2 full page advertisements depicting petitioners, item nos. in Cycle III, map and locations of various properties in Cycle III - in 2 separate newspapers

OUT OF CYCLE COSTS DUE - \$339.50

GRAND TOTAL DUE THE ZONING OFFICE - \$479.96

Please make your check payable to "Baltimore County, Maryland", in the amount of \$479.96 and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:med

ccs: Joel D. Fedder, Esquire  
Baltimore County Board of Appeals

RECEIVED  
COUNTY BOARD OF APPEALS  
AUG 18 1986



LAW OFFICES  
**NOLAN, PLUMHOFF & WILLIAMS**  
CHARTERED  
204 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204  
(301) 823-7600

OF COUNSEL  
RALPH E. DEITZ  
9026 LIBERTY ROAD  
RANDALLSTOWN, MARYLAND 21133  
(301) 822-2121  
RUSSELL J. WHITE

August 4, 1986

RECEIVED  
AUG 5 1986  
ZONING OFFICE

Joel D. Fedder, Esquire  
514 N. Crain Highway  
Glen Burnie, Maryland 21061

Re: Advertising Costs in the  
Amount of \$140.46 Due  
for the Diffendall Property

Dear Joel:

Please find enclosed a copy of a letter dated July 21, 1986 from Commissioner Jablon regarding a fee in the amount of \$140.46 to cover advertising for the Diffendall tract.

Even though the Planning Board removed us from the cycle, notice of the property did appear twice, namely, on April 24, 1986 and May 1, 1986, as noted in the letter.

It will be greatly appreciated if you will direct your payment to Ms. duBois of the Zoning Office. Thank you for your prompt attention to this matter.

With best regards, I am

Sincerely,  
*Newton*  
Newton A. Williams

NAW:ylm  
Enclosure  
cc: Ms. Margaret E. du Bois

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

June 20, 1986  
July 21, 1986 SECOND REQUEST

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 20, Cycle III

Dear Mr. Williams:

This is to advise you that although the County Council approved the Petition for Reclassification be withdrawn from Cycle III and placed out of cycle, as of May 3, 1986, you are still liable for a portion of two full page advertisements which were required to have published on April 24, 1986 and May 1, 1986 concerning this reclassification matter.

Please make your check payable to "Baltimore County, Maryland", in the amount of \$140.46 and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:mcd  
cc: Baltimore County Board of Appeals

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

June 20, 1986

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 20, Cycle III

Dear Mr. Williams:

This is to advise you that although the County Council approved the Petition for Reclassification be withdrawn from Cycle III and as of May 3, 1986, you are still liable for advertisements which were required to have published on April 24, 1986 and May 1, 1986 concerning this

payable to "Baltimore County, Maryland", remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

Appeals

7/30  
Time: 9:30 a.m.  
# R-87-39

WHILE YOU WERE OUT

To: [blank]  
Date: [blank]  
M: [blank]  
C: [blank]  
Phone: [blank]

TELEPHONED [ ] PLEASE CALL [ ]  
CALLED TO SEE YOU [ ] WILL CALL AGAIN [ ]  
WANTS TO SEE YOU [ ] URGENT [ ]

RETURNED YOUR CALL [ ]

Name: *Newton Williams*  
Address: *204 West Pennsylvania Ave*  
City: *Towson*  
State: *MD*  
Zip: *21204*

Call # *R-87-39*

Cambridge 08301

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 10 1986

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, MD, appearing on July 10, 1986.

THE JEFFERSONIAN,  
*Susan Stender O'Brien*  
Publisher

126-50

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

NOTICE OF HEARING

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Case No. R-87-39  
(Item No. 20, Out of Cycle III)

TIME: 9:30 a.m.  
DATE: Wednesday, July 30, 1986  
PLACE: Room 218, Courthouse, Towson, Maryland

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCIAL & REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 218442

DATE: 2/28/86

AMOUNT: \$100.00

PAID TO: *Nolan, Plumhoff & Williams*

PAID FOR: *Diffendall*

8 8731 \*\*\*\*\* 1000016 8285F

County Council of Baltimore County  
Court House, Towson, Maryland 21204  
(301) 494-3196

COUNCIL

Ronald B. Hickernell  
FIRST DISTRICT

Gary Huddles  
SECOND DISTRICT

Charles A. Rappaport, III  
THIRD DISTRICT

Barbara F. Baskin  
FOURTH DISTRICT

Norman W. Lauenstein  
FIFTH DISTRICT, CHAIRMAN

Eugene W. Gallagher  
SIXTH DISTRICT

John W. O'Rourke  
SEVENTH DISTRICT

William T. Hackett, Chairman  
Baltimore County Board of Appeals  
Court House  
Towson, Maryland 21204

Dear Mr. Hackett:

This is to advise you that the County Council, at their meeting on Monday, May 5, 1986, approved the Planning Board's motion certifying that early action on the Diffendall/Fedder Zoning Reclassification Petition would be in the public interest.

Sincerely yours,  
*Thomas Toporovich*  
Thomas Toporovich  
Secretary

TT:dp  
Enclosure  
cc: Norman Gerber  
Newton Williams

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 1524  
Posted for: *Reclassification*  
Petitioner: *Charlotte Diffendall*  
Location of property: *NW/S Eastern Blvd., 65' SW of Diamond Pkwy*  
Location of Signs: *All signs removed by 7/15/86*  
Remarks: *See above*  
Posted by: *[Signature]*  
Number of Signs: 3

RECEIVED  
COUNTY BOARD OF APPEALS  
NOV 24 1986







## BALTIMORE COUNTY PLANNING BOARD

## RESOLUTION

April 17, 1986

WHEREAS, Pursuant to Subsection 2.58.1(i) of the Baltimore County Code 1979 as amended, the Baltimore County Planning Board has reviewed the request by Charlotte Diffendall, et al to exempt from the zoning cycle the subject reclassification petition; and

WHEREAS, The Planning Board believes that early action is required on this petition to provide for consideration of the timely development and benefits therefrom; therefore, be it

RESOLVED, That the Baltimore County Planning Board hereby certifies to the County Council of Baltimore County that early action on the subject Zoning Reclassification Petition would be in the public interest.

I HEREBY CERTIFY that the above resolution was duly adopted by the Baltimore County Planning Board at its meeting in Towson, Maryland, on April 17, 1986.

Date 4/27/86

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Secretary of the Baltimore County  
Planning Board

## BALTIMORE COUNTY PLANNING BOARD

## RESOLUTION

August 21, 1986

WHEREAS, Pursuant to Subsection 2.58.1(m) of the Baltimore County Code, the Baltimore County Planning Board has reviewed the amended zoning reclassification petition for the Charlotte Diffendall, et al property; and

WHEREAS, The Planning Board was supportive of this exempted petition in its original form; and

WHEREAS, The Planning Board is supportive of the subject request as amended; therefore be it

RESOLVED, That the Baltimore County Planning Board recommends that the petitioner's request be granted.

I HEREBY CERTIFY that the above resolution was duly adopted by the Baltimore County Planning Board at its meeting in Towson, Maryland, on August 21, 1986.

Date 8/22/86

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Secretary to the Baltimore County  
Planning Board

COUNTY BOARD OF APPEALS  
RE: AUG 22 A D 36 E

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

William T. Hackett, Chairman  
TO: County Board of Appeals Date: August 22, 1986

Norman E. Gerber, AICP, Director  
FROM: Office of Planning and Zoning

Zoning Reclassification Petition No. R-87-39  
SUBJECT: Property of Charlotte Diffendall, et al.

This property, a small part of a total site of 31 acres zoned B.R. and M.L.-I.M., is located on the north side of Eastern Boulevard at Diamond Point Road opposite the Back River Sewerage Treatment Plant. The original request for a zoning reclassification to B.R. for the 17-acre portion of the site currently zoned M.L.-I.M. was exempted from cyclical procedures on May 5, 1986 by the Baltimore County Council. The original petition was amended at open hearing before the County Board of Appeals on July 30, 1986. The current petition requests a change from M.L.-I.M. to B.R. zoning for two parcels of land containing a total of 2.73 acres, and the petitioner has chosen to submit documented plans.

Prior to the 1984 Comprehensive Zoning Map process, the entire 31-acre property was zoned M.H. During the preparation and processing of the map, the zoning of this property was identified as an issue before the County Council (Item No. 7-50). At that time the petitioner requested a change from M.H. to the B.R. and M.L.-I.M. zoning classifications. The petitioner requested B.R. zoning for a portion of the property along Eastern Boulevard; the Planning Board recommended a lesser amount of B.R. zoning. The County Council adopted B.R. zoning to a lesser depth from Eastern Boulevard than requested, and M.L.-I.M. zoning for the remainder of the site.

To say that the subject property has been a problem site over the years is an understatement. Junked autos, a series of ramshackle structures, oil, grease and general debris cover the site. In addition to the visual ugliness, the site has been a constant source of pollutants along the shoreline. The proposal is to clear the entire property and construct a modern shopping center. Needless to say, this office is supportive of the proposal.

This property is within the boundaries of the area governed by the Chesapeake Bay Critical Area legislation. Although no formal CAG application has been made, a full Critical Area report has been submitted to and reviewed by this office. The following are excerpts from office correspondence from May and June of this year, relating to the proposal for the entire 31-acre site:

To satisfy the need for revegetation, the applicant has proposed a minimum 50-foot vegetated buffer around most of the site (3.3 acres total), expanded parking islands and roadsides (2.5 acres total), and the acquisition of property between the site and the Back River

CPS-008

William T. Hackett  
August 22, 1986  
Page 2

shoreline (5.5 acres total), which would be completely reforested. This kind of restoration would be a substantial improvement over the present condition and is consistent with the goals of the Critical Area legislation for habitat preservation in intensely developed areas.

With regard to water quality, the applicant is proposing a stormwater management pond, located in the northeast corner of the site and capable both of infiltrating the first inch of rainfall and of reducing post-development pollutant loadings to a minimum of 26% less than those of existing levels. Although Public Works must confirm that the final engineering plan for the stormwater management system can, in fact, achieve the stated levels of pollutant reduction, conceptually, the plan meets all County and State criteria for stormwater management in the Critical Area. Furthermore, it would ameliorate what is now an actively polluting condition.

In general, the proposed development would not only meet the fundamental requirements and intent of the Critical Area legislation but would also correct an extremely degraded situation. It is, therefore, recommended that Critical Area approval be granted for the proposed Diamond Point Plaza concept plan with the following specific requirements:

- 1) Stormwater discharge from the pond must be at non-erosive rates.
- 2) The discharge channel must be stabilized.
- 3) A reevaluation will need to be made if the applicant is unable to purchase the parcels for reforestation.

In general we think the proposed Diamond Point Plaza will make a significant contribution to the upgrading of the Back River area . . .

This office is in receipt of correspondence from the Essex Development Corporation supporting the construction of the proposed shopping center and stating, in part, that "the physical improvements and types of anchor stores proposed would improve the entry to Essex and increase the marketability of our own portion of Eastern Boulevard, which is not appropriate for such large commercial facilities." Further, "removal of the current facilities at Diamond Point Road and improvement with quality development such as the proposed shopping

William T. Hackett  
August 22, 1986  
Page 3

center would greatly enhance our community". Finally, the Baltimore County Economic Development Commission supports the development of the shopping center here.

It is this office's opinion that the redevelopment of this site as proposed by the petitioner will be of benefit to Baltimore County and that the subject petition should be granted.

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Director

NEG:slm

cc: Newton A. Williams, Esq.  
Attorney for the Petitioner  
Phyllis Cole Friedman  
People's Counsel

Baltimore County Office of Planning and Zoning  
August 13, 1986

WORK SESSION AND REGULAR MEETING  
of the  
BALTIMORE COUNTY PLANNING BOARD  
held on  
THURSDAY, AUGUST 21, 1986  
in  
Room 106, County Office Building

\*\*\*\*\*

WORK SESSION  
ad hoc Committee on Development Plans and Issues  
Mr. Worrall, Chairman

## TIME

## AGENDA

- 5:15 p.m. 1. Call to Order - Mr. Worrall
- 5:16 p.m. 2. Charlotte Diffendall Property Reclassification - Documented Site Plan referred to Planning Board by Board of Appeals.

\*\*\*\*\*

REGULAR MEETING  
of the  
BALTIMORE COUNTY PLANNING BOARD  
Mr. Dryden, Chairman

- 5:30 p.m. 1. Call to Order - Mr. Dryden
- 5:31 p.m. 2. Introduction of Board members and announcements
- 5:32 p.m. 3. Review of Agenda
- 5:33 p.m. 4. Citizen Comment
- 5:38 p.m. 5. Minutes of meeting of July 17, 1986
- 5:39 p.m. 6. Charlotte Diffendall Property Reclassification - Documented Site Plan - recommendation of ad hoc Committee on Development Plans and Issues
- 5:45 p.m. 7. Notification to Planning Board of potential conflict with Master Plan: Cunningham Cove Section II
- 5:47 p.m. 8. "Lakeside" PUD - recommendation by ad hoc Committee on Master Plan and Zoning Map
- 6:10 p.m. 9. Other Business

DINNER  
6:30 p.m.

Note: Copies of agenda, with enclosures, if any, will be available for public inspection on Monday, August 18, 1986, at the following Baltimore County Public Libraries: Arbutus, Catonsville, Cockeysville, Essex, Loch Raven, North Point, Parkville, Perry Hall, Pikesville, Randallstown, Reisterstown, Rosedale, Towson and Woodlawn.

COUNTY BOARD OF APPEALS  
RE: AUG 14 P 2-11

BALTIMORE COUNTY  
DEPARTMENT OF TRAFFIC ENGINEERING  
TOWSON, MARYLAND 21204  
494-3550

STEPHEN E. COLLINS  
DIRECTOR

August 22, 1986

Mr. William Hackett, Chairman  
Board of Appeals  
Office of Law, Courthouse  
Towson, Maryland 21204

SUBJECT: Cycle III - April, 1986  
Item No. 20

Property Owner: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/4 Eastern Blvd., 65' SW of the c/l of Diamond Point Road  
Existing Zoning: M.L. - I. M.  
Proposed Zoning: B. R. CRITICAL AREA  
Acres: 17.867 acres  
District: 15th Election District

Dear Mr. Hackett:

This office has reviewed the traffic impact study for Diamond Point Plaza prepared by The Traffic Group, Inc. dated July 14, 1986. This study appears to adequately depict the traffic conditions expected with the construction of Diamond Point Plaza. The study has also been approved by the State Highway Administration.

It is my understand that the re-classification has been reduced to 2.37 acres and therefore will not have a major change in traffic volume over the present zoning.

Very truly yours,

*C. Richard Moore*  
C. Richard Moore,  
Deputy Director  
Department of Traffic Engineering

CFM:bza

cc - Mr. Newton Williams, Nolan, Plumbhoff & Williams, Chartered  
204 West Pennsylvania Avenue, Towson, Maryland 21204  
- Ms. Phyllis C. Friedman, People's Counsel

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

William F. Hackett - Chairman  
TO: Appeals Board Date: June 24, 1986

Charles E. "Ted" Burnham  
FROM: Plans Review Chief, Department of Permits & Licenses

SUBJECT: April - October 1986 - Zoning Classification - Cycle III

Item #20 Property Owners: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/4 Eastern Blvd., 65' SW of the c/l of Diamond Point Road  
Existing Zoning: M.L.-I.M.  
Proposed Zoning: B.R. CRITICAL AREA  
Acres: 17.867 Acres  
District: 15th. Election District

Due to the proximity to Back River, Section 516.0 of Council Bill #17-85 dealing with tidal inundation and riverine flood plains should be reviewed for application if the elevations of the property are at an elevation of 10'-0" or less. The Department of Public Works should be able to determine if any part of the property is affected, or if there is in fact a designated tidal flood area.

CEB/vv



SPECIAL NOTE FOR CONSTRUCTION IN TIDAL OR RIVERINE AREAS  
BILL #17-85 BALTIMORE COUNTY BUILDING CODE 1984  
EFFECTIVE - APRIL 22, 1985

SECTION 516.0 A Section added to read as follows:

SECTION 516.0 CONSTRUCTION IN AREAS SUBJECT TO FLOODING

516.1 AREAS SUBJECT TO INUNDATION BY TIDEWATERS:

1. Whenever building or additions are constructed in areas subject to inundation by tides, the building's lowest floor (including basement) shall be not lower than one (1) foot above the 100-year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is more restrictive. These buildings or additions shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure with materials resistant to flood damage.

Areas beneath buildings will not be considered as basements if headroom to underside of floor joists is less than six feet or if enclosure walls are at least 50 percent open.

2. Crawl spaces under buildings constructed in the tidal plain, as determined by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.

3. New or replacement utility systems, including but not limited to water supply, sanitary sewage, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

516.2 RIVERINE AREAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.

1. No structures or additions shall be within the 100-year flood plain of any watercourse. The 100-year flood plain shall be based upon the Federal Flood Insurance Study or the Department of Public Works, whichever is the more restrictive. This determination shall include planned future development of the watershed area.

2. Reconstruction of residential dwelling units shall be governed by Sections 103.0 or 120.0 as applicable, except that rebuilding of residential dwelling units damaged in excess of 50 percent of physical value shall also be governed by the provisions of Subsection 516.1 of this Section.

3. Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 516.1 when damage exceeds 50 percent of physical value.

April 1985

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 14, 1986

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

ooo

Chairman

MEMBERS

Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Newton A. Williams, Esquire  
Holan, Plumbhoff & Williams, Chartered  
204 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Item No. 20 Out of Cycle III  
October - April, 1986  
Petitioner: Charlotte Diffendall  
Reclassification Petition

Dear Mr. Williams:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing out of cycle since the adoption of the current zoning maps. The petition has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which has been scheduled for July 30, 1986 at 9:30 a.m. will be forwarded to you in the future.

Very truly yours,

James E. Dyer/kkb

JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:kkb (MS021)  
Enclosures



Maryland Department of Transportation

State Highway Administration

William K. Hellmann  
Secretary  
Hal Kassoff  
Commissioner

May 6, 1986

Mr. William Hackett, Chairman RE: Baltimore County  
Board of Appeals Item # 20  
County Office Building  
Towson, Maryland 21204

Contract Purchaser:  
Joel D. Pedder  
Location: NW/S Eastern  
Blvd. (Route 150)  
65' SW of the centerline  
of Diamond Point Road  
Existing Zoning: M.L.-  
I.M.  
Proposed Zoning: B.R.  
Acres: 17.867  
District: 15th

ATT: James Dyer

Dear Mr. Dyer:

On review of the submittal of 2/27/86, the State Highway Administration offers the following comments.

The site plan presented for review and comment is very unclear and offers no detail for access to the site.

Any access to the site by way of Eastern Boulevard will require highway improvements to meet S.H.A. standards.

Very truly yours,

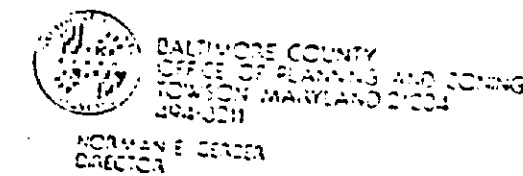
Charles Lee, Chief  
Bureau of Engr. Access Permits  
by: George Wittman

CL-GW:es

cc: J. Ogle

My telephone number is 301-659-1350

Teletypewriter for Impaired Hearing or Speech  
381-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free  
P.O. Box 7-71707 North Calvert St., Baltimore, Maryland 21203-0717



Mr. Arnold Jablon  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

April 23, 1986

(CRITICAL AREA)

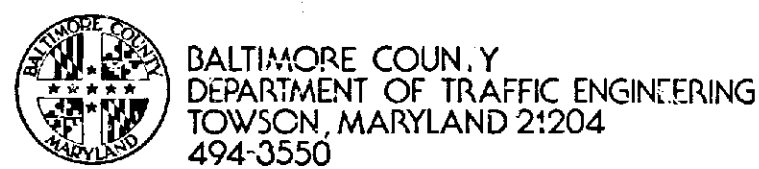
RE: Zoning Advisory Meeting of CYCLE III - Petition  
Item # 20 - CYCLE III  
Petitioner: Charlotte Diffendall  
Location: NW/S Eastern Blvd. 65' SW  
of E of Diamond Point Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- ☒ There are no site planning factors requiring comment.
- ☒ A County Review Group meeting is required.
- ☒ Forward by the Bureau of Public Services.
- ☒ This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- ☒ A record plat will be required and must be recorded prior to issuance of a building permit.
- ☒ The access is not satisfactory.
- ☒ The circulation on this site is not satisfactory.
- ☒ The parking arrangement is not satisfactory.
- ☒ This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- ☒ Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-53 of the Development Regulations.
- ☒ Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- ☒ The amended Development Plan was approved by the Planning Board.
- ☒ Landscaping must comply with Baltimore County Landscape Manual.
- ☒ The property is located in a deficient service area as defined by 811.123-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is:
- ☒ The property is located in a traffic area controlled by a 70' level intersection as defined by 811.123-79, and as conditions change the intersection shall be widened. The Basic Services Areas are:
- ☒ Additional comments:
- ☒ THIS SUBJECT PROPERTY IS REZONED ANY FUTURE DEVELOPMENT OF THE SITE MUST MEET THE REQUIREMENTS OF BILL # 17-85, THE DEVELOPMENT REGULATIONS.
- ☒ THIS SITE IS LOCATED IN THE CHESAPEAKE BEACH CRITICAL AREA. ADDITIONAL COMMENTS WILL BE PROVIDED BY THE COMPREHENSIVE PLANNING DIVISION.

cc: James Hackett, Planning Division  
Eugene A. Rober, Chief, Current Planning and Development



STEPHEN E. COLLINS  
DIRECTOR

May 19, 1986

Mr. William Hackett, Chairman  
Board of Appeals  
Office of Law, Courthouse  
Towson, Maryland 21204

Cycle III  
Item No. 20  
Property Owner: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/S Eastern Blvd., 65' SW of the centerline of Diamond Point Road  
Existing Zoning: M.L.-I.M.  
Proposed Zoning: B.R. CRITICAL AREA  
Acres: 17.867 acres  
District: 15th Election District

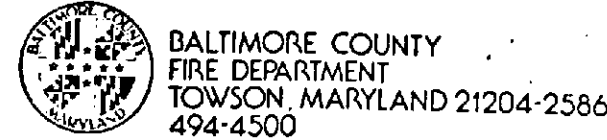
Dear Mr. Hackett:

The present M.L.-I.M. zoning for this site can be expected to generate 180 trips per day, and the proposed B.R. zoning can be expected to generate 8900 trips per day.

Very truly yours,

Michael S. Flanigan  
Traffic Engineer Associate II

MSF:lt



PAUL H. REINCKE  
CHIEF

May 13, 1986

Mr. Arnold Jablon  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: William Hackett  
Chairman, County Board of Appeals

RE: Property Owner: Charlotte Diffendall

Location: NW/S Eastern Blvd. 65' SW of the centerline of Diamond Point Road

Item No.: 20 Zoning Agenda: Cycle III  
4/86 - 10/86

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

(X) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Noted and Approved: John F. O'Neill  
Planning Group Fire Prevention Bureau  
Special Inspection Division

/mb

CHARLOTTE DIFFENDALL

Joel D. Pedder, C.P.

#R-87-39

Item #20, Cycle III, 1986 out  
OF CYCLE  
5-5-86

NW/S Eastern Blvd., 65'  
SW of c/l of Diamond Point Road

15th District

ML-IM to B.R.

17.867 acres

Feb. 28, 1986 Petition filed

Newton A. Williams, Esquire  
204 W. Pennsylvania Ave. (21204)

Counsel for Petitioner

Charlotte Diffendall  
1301 Macton Road  
Street, MD 21154

Petitioner

Joel Pedder  
514 N. Crain Highway  
Glen Burnie, MD 21061

Contract Purchaser

James Earl Kraft  
Baltimore County Board of Education  
940 York Rd. (21204)

Phyllis Cole Friedman

People's Counsel

Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer

Milton & Ida Tancibok  
320-322 Oriole Ave. (21224)

Mrs. Nancy M. Letter  
P. O. Box 18559 (21237)

Russell Mirabile  
400 Mirabile Lane (21224)

Matko Lee Chullin  
408 Oriole Ave. (21224)



County Board of Appeals of Baltimore County

Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180

September 17, 1986

Newton A. Williams, Esquire  
204 W. Pennsylvania Avenue  
Towson, MD 21204

Re: Case No. R-87-39  
Charlotte Diffendall

Dear Mr. Williams:

Enclosed herewith is a copy of the Opinion and Order passed by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart, Asst. Secretary

Encl.

cc: Charlotte Diffendall  
Joel Pedder  
James Earl Kraft  
Phyllis Cole Friedman  
Milton & Ida Tancibok  
Mrs. Nancy M. Letter  
Russell Mirabile  
Matko Lee Chullin  
Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Bettye DuBois



RECEIVED  
COUNTY BOARD OF APPEALS  
163 SEP 15 A 11:30

PETITION OF CHARLOTTE  
DIFFENDALL (JOEL D. FEDDER,  
CONTRACT PURCHASER)  
NORTHWEST SIDE OF EASTERN  
BOULEVARD, 65' SOUTHWEST OF  
CENTERLINE OF DIAMOND POINT  
ROAD  
15TH DISTRICT  
ML-IM TO LIMITED,  
DOCUMENTED BR

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. R-87-39

PETITIONERS' MEMORANDUM IN SUPPORT  
OF REQUESTED, LIMITED, DOCUMENTED BR

Charlotte Diffendall, legal owner, and Joel D. Fedder, contract purchaser, by Newton A. Williams and Nolan, Plumhoff & Williams, Chartered respectfully present this Memorandum to the Baltimore County Board of Appeals in support of the limited, documented, request reclassification from ML-IM to BR in the above-entitled matter.

STATEMENT OF THE CASE

The petitioners originally filed as a part of the April to October, 1986 petition process asking for a total reclassification to unrestricted BR of just slightly less than eighteen central and rear acres of ML-IM zoning of the thirty-one acre Diffendall property on Eastern Boulevard in Eastern Baltimore County, the frontage already being zoned BR.

At the request of the petitioner the County Council in the public interest and due to pressing time problems of the Petitioners removed the case from the ordinary zoning cycle and directed that it be heard out of cycle.

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

Subsequently, at a hearing before the Board begun on July 30, 1986 the petitioners amended from eighteen acres, minus, of unrestricted BR to a limited, documented request for 2.733 acres of documented BR zoning in two (2) areas in the central portions of the thirty-one acre tract, and submitted a fully documented site plan at that time as to those two acres, illustrative as to the remainder of the tract.

Pursuant to Section 2-58.1 of the Baltimore County Code, the Board immediately suspended the proceedings and referred the matter back to the Planning Staff and Planning Board for a further recommendation as to this limited, documented request.

By resolution dated August 21, 1986, the Planning Board on favorable recommendation of the Planning Staff recommended to the County Board of Appeals that the petitioners limited, documented request be granted.

That favorable Planning Board and Staff recommendation was explained in more detail by a Memorandum from Norman E. Gerber, Director of the Office of Planning and Zoning to the County Board of Appeals dated August 22, 1986, which made a similar recommendation that the request be granted, explaining in detail the reasons why a favorable recommendation was made. Both of these documents, the Planning Resolution of August 21, 1986, and the Director of the Office of Planning and Zoning favorable Memorandum of August 22, 1986, are in the Board's file.

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NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

On Tuesday, August 26, 1986, the Diffendall case was continued before the Board, and detailed testimony was presented by both the petitioner and Baltimore County on the amended, limited BR requested. There were no protestants.

The Petitioner presented testimony consisting of Charlotte Diffendall, one of the owners, who sketched the history of the property; Mr. Joel D. Fedder, a Baltimore area developer, who covered in detail his proposal for Diamond Point Plaza, as well as his part in the 1984 map process; and Mr. George Gavrelis of Daft-McCune-Walker, who covered engineering aspects, as well as points of error and change as to the zoning and area.

In addition, Ms. Marsha Jackson of the Essex Development Corporation appeared and testified in favor of the proposal, as did a number of neighborhood residents.

The only witness presented on behalf of Baltimore County was Mr. James Hoswell, one of the authors of the favorable Director's Report and the favorable Planning Board recommendation.

Baltimore County, Maryland was represented by both the People's Counsel, Phyllis Friedman, Esquire, and the Deputy People's Counsel, Peter M. Zimmerman, Esquire one or both of whom were present at all times during the hearing; and who presented testimony and cross examined various witnesses.

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NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

STATEMENT OF FACTS

All parties agree that the Diffendall property is composed of just slightly in excess of thirty-one acres, and it is bounded on the south by Eastern Boulevard, with extensive frontage thereon, of approximately eighteen hundred feet. The property's western boundary is in part Oriole Avenue, and in part various homes along the southeast side of Oriole Avenue zoned D.R. 16. The property's northern and eastern boundaries are primarily Diamond Point Road, a public road which was improved as two lanes with major shoulders in the latter part of 1970s.

The property is zoned at the present time in two major zones, namely, BR on the frontage to an approximate depth of three hundred ninety to four hundred feet from the centerline of Old Eastern Boulevard, not shown in its present configuration on the operative 200 scale zoning map; with the remainder of the tract of just slightly less than eighteen acres in ML-IM, two portions of which are sought to be reclassified in this case to limited, documented BR.

There are two parcels sought to be reclassified to documented, limited BR, namely, the east parcel of 1.479 acres and the west parcel of 1.254 acres, for a total of 2.733 acres of limited, restricted BR, as opposed to the original request for about eighteen acres of undocumented, unrestricted BR on an open site plan.

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& WILLIAMS,  
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As is shown in various exhibits, including petitioners' exhibit 17, a 1986 County aerial photo and petitioners' exhibits 13 A, B, and C, the property is virtually covered with junked automobiles. The entire property enjoys a non-conforming use status, which was affirmed by the Circuit Court on the rear of the parcel and on a portion of the frontage in Case 74-159-V, including such a finding by this Board; and by the Deputy Zoning Commissioner for a number of non-conforming Eastern Boulevard frontage, automobile related uses in Case No. 82-218-SPH.

The Eastern Boulevard frontage uses (including nine buildings, all of which are proposed to be removed) are dotted in on the site plan, petitioners' exhibit 3, and are shown in detail on the McKee approved site plan dated July 29, 1981, as approved by Baltimore County on September 21, 1983, petitioners' exhibit 11. As for the appearance of these dilapidated, concrete block, older uses with some eleven driveway cuts along the north side of Eastern Boulevard, see the petitioners' photographic exhibits 12 A through 12 U.

In order to build Diamond Point Plaza, Mr. Fedder testified that all of the frontage uses and all of the junked automobiles, including the junked automobiles on a two acre site on the north side of Diamond Point Road, not a part of this petition will have to be completely removed. This removal of this long continued junk yard operation with unsightly

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CHARTERED

junked automobiles, with seeping gas, oil and heavy metals was endorsed by Baltimore County's Critical Area Section of the Department of Planning in petitioners' exhibit 10, (namely, a letter by Susan Carrell, the Acting Chief of the Current Planning Division, dated May 20, 1986, as well as a Memorandum by Planner Audrey Thier dated May 20, 1986 as well). The favorable effects of this removal of junk, debris and older uses were confirmed by the Director's recommendation to the Board dated August 22, 1986, and by the Critical Areas/Environmental Effects Report prepared by Dr. Frank Pine of EA Engineering, Science, and Technology, Inc., stipulated to as petitioners' Exhibit 9.

Mr. Guckert's basic traffic conclusions, as contained in his report, petitioner's exhibit 8, were reinforced in a letter from C. Richard Moore, Deputy Director of the Department of Traffic Engineering to the Chairman of the Board of Appeals, dated August 22, 1986. The Moore letter report is in the Board's file, to the general effect that "It is my understanding that the re-classification has been reduced to 2.37 acres and therefore will not have a major change in traffic volume over the present zoning." Mr. Guckert also explained in his testimony, report and plat the extensive widening and improvements planned for Eastern Boulevard and Diamond Point Road.

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NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

We believe that everyone involved with the case on all sides agrees that it would be a vast improvement over the present situation if the junk yards and older Eastern Boulevard uses were removed and Diamond Point Plaza substituted, but the question is was the action of the Baltimore County Council in zoning the property BR to a depth of approximately three hundred ninety to four hundred feet from an incorrectly located Eastern Boulevard, with the remainder of the tract being placed in a ML-IM zone on the 1984 zoning maps error. We emphatically assert that it was and is error to so zone the property.

DISCUSSION OF MAP ERROR AND MAP  
CHANGES CONCERNING THE DIFFENDALL PROPERTY

The petitioners' testimony from Mr. Gavrelis, Mr. Fedder, Mrs. Diffendall, Mr. Guckert, and Ms. Jackson of the Essex Development Corporation, all show that Council did err in dividing the Diffendall property as it did on the 1984 zoning maps between BR on the frontage and ML-IM in the back.

First of all, the property has been a junk yard since the 1930s with older, outdated uses on the frontage, and it has never really received a good and close zoning look, probably since everyone just assumed that the junk yard would continue with the related frontage uses.

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

A brief sketch of the zoning history, according to the testimony, is that from 1945 to 1955 the property was zoned in an "E" commercial zone, the sole commercial zone, to a depth of one hundred fifty feet along the frontage, and a cottage "A" zone in the back. Under the 1948 Zoning Regulations, a special permit was required in a "G" heavy industrial zone in order to legitimately operate a junk yard, and thus, there is some question whether the cottage "A" zoning in the rear was then correct if the junk yard was to be upgraded.

On March 30, 1955, the basic Baltimore County Zoning Regulations as we know them today were adopted. By operation of Section 100.3 thereof, still in effect, "E" commercial was automatically transformed to BL, manifestly incorrect for the automobile related frontage uses, which uses required and require today BR zoning; and cottage "A" was automatically converted to R.6, again incorrect if there was any thought of regulating and cleaning up the junk yard operation pursuant to a special exception, which special exception required a M.H. base zone.

Again, according to Mr. Gavrelis, in 1962, the Comprehensive Zoning Map for the Essex area divided the property between BR on the southwest and southeast corners, with some RA, residence, apartments, zoning along Oriole Avenue. The bulk of the property, on the 1962 zoning map, was

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& WILLIAMS,  
CHARTERED



11/7/86  
Docketed

MAP NE IF  
4B  
E.D. 15  
DATE 1-9-87  
200  
1000  
DP

R-87-39  
#20 (Cont of Appeal from 11/1)

R-87-39  
#20 (Cont of Appeal from 11/1)

Charlotte Diffendall - R-87-39  
NW/4 Eastern Blvd., 65' SW of the C/L  
15th Elec. Dist.

IN THE MATTER OF : BEFORE  
THE APPLICATION OF : COUNTY BOARD OF APPEALS  
CHARLOTTE DIFFENDALL : OF  
FOR RECLASSIFICATION : BALTIMORE COUNTY  
FROM ML-IM TO B.R. :  
NW/4 EASTERN BLVD. 65' :  
SW OF C/L OF DIAMOND :  
POINT ROAD : NO. R-87-39  
15th DISTRICT :

OPINION

This case comes before the Board on a petition for rezoning of a portion of the subject site from M.L.-I.M. to a B.R. zone to permit the development of this site into a shopping center. The property consists of some 31+ acres of which 13+ acres were rezoned to B.R. during the 1984 comprehensive map process and the remaining 18+ acres were zoned M.L.-I.M.. The original reclassification petition was a request to rezone this entire 18+ acres from M.L.-I.M. zoning to a B.R. classification. On July 30, 1986, the Petitioner, before the Board, submitted an amendment to his petition reducing the acreage involved from 18+ acres to some 3+ acres, and submitted a documented site plan which showed the details of its use. The case at that time was continued to permit all proper County authorities to review the amended proposal and to comment on same. All of this having been complied with, the case was heard this day, August 26, 1986, in its entirety. The subject property is located on the northwest side of Eastern Boulevard 65 feet southwest of the centerline of Diamond Point Road, in the Fifteenth Election District of Baltimore County.

The Board is of the Opinion that a brief history of the property and its present uses should be stated. The property is bounded on the east and north by Diamond Point Road, on the west by Oriole Avenue and along Eastern Boulevard on the south, and prior to the 1984 map process was zoned M.H. The present owners acquired this property through a series of purchases of portions of the subject site starting in 1932 and going through 1945. The

CHARLOTTE DIFFENDALL - #R-87-39

entire frontage along Eastern Boulevard is being utilized for a series of used car lots, auto repair businesses, salvage operations and junk car dealerships. The entire rear area away from Eastern Boulevard is being used for the storage of junk cars and trucks, as shown on Petitioner's Exhibit #13. All of these uses are nonconforming uses and are unattractively operated. On the south side of Eastern Boulevard is the Back River Sewage Disposal Plant. While this operation is well maintained and pleasing to the eye, there are obvious detriments associated with its use to nearby properties.

Petitioner presented testimony in this case from Wesley Guckert, Traffic Engineer, whose report was entered as Petitioner's Exhibit #8. Mr. Guckert testified that the plan as submitted would remove all existing individual access points along Eastern Boulevard and provide only two access points, one of which is presently signaled and would improve the traffic situation as it now exists. C. Richard Moore, Baltimore County Traffic Engineer, by letter, concurred.

Ms. Marsha Jackson, Executive Director of Eastern Development Corp., testified in favor of the petition. She testified that the present uses were undesirable, created a bad impression to anyone entering Essex along this route, noted the present renovation of the Back River Bridge and the number of potential jobs the project could create and stated that the Board of Directors of the Development Corporation approved this plan. Mr. Matko Chullin also testified that he supports the Development Corporation's approval.

Mrs. Charlotte Diffendall, property owner, testified as to the history of this site, its present uses and that her contract of sale to Mr. Joel Fedder was contingent on approval of the submitted plan. She also testified that all present tenants on the property were on a month by month rental

PETITION FOR ZONING RE-CLASSIFICATION  
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law

of Baltimore County, from an ML-IM zone to a B.R. zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property,

for the reasons given in the attached statement, a variance from the following section of the Zoning Law and Zoning Regulations of Baltimore County:

As to the reasons for this reclassification, see the attached Statement in Support of Petition for Zoning Reclassification.

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Joel Fedder  
(Type or Print Name)  
Signature: [Signature]  
Address: 514 N. Crain Highway  
City and State: Glen Burnie, Maryland 21061  
768-4100

Legal Owner(s): Charlotte Diffendall  
(Type or Print Name)  
Signature: [Signature]  
(Type or Print Name)  
Address: 1101 Macton Road  
City and State: Street, Maryland 21154

Attorney for Petitioner: Newton A. Williams  
(Type or Print Name)  
Signature: [Signature]  
Address: 204 W. Pennsylvania Avenue  
City and State: Towson, Maryland 21204  
Attorney's Telephone No.: 823-7800

Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
Newton A. Williams  
Name: 204 W. Pennsylvania Avenue  
Address: Towson, Maryland 21204  
Phone No.: 823-7800

CHARLOTTE DIFFENDALL - #R-87-39

basic. Mr. Joel Fedder, Contract Purchaser, next testified. He noted his development experience and described his proposed use of the site in detail. Mr. Fedder also testified as to his attempts to gain his rezoning during the 1984 map process. His first request was Issue 7-50 asking for a 300 foot depth of B.R. along Eastern Boulevard. He then entered Issue 7-62 asking for B.R. for the entire 17+ acres. A preliminary study of the site indicated that the Issue 7-50 request for a 300 foot depth might be too little, and just prior to final adoption of the maps attempted to increase this request to a 600 foot depth from Eastern Boulevard. The County Council, after deliberation on these issues, granted B.R. for a depth of 400 feet from Eastern Boulevard and M.L.-I.M. on the remainder.

Mr. Fedder, having now done a survey of the site and prepared a documented site plan, testified that the project is only feasible if the additional 3+ acres, as shown, be rezoned B.R. to allow the repositioning of the two major tenants to meet all setback requirements and to provide proper parking. He also testified that the total estimated cost of this development, as proposed, would be about fifteen (15) million dollars.

Mr. George Gavrellis, Land Planner, was Petitioner's final witness. Mr. Gavrellis testified that he designed the zoning request and emphasized that this request was actually a downshifting of the zoning. He testified as to the design of the storm water system, the sewer system and especially noted that all of the critical area requirements have been complied with. He further testified that the present zoning only permits strip zoning along Eastern Boulevard, which is undesirable and a detriment to the whole area. In conclusion, it was his opinion that the County Council erred in not providing enough B.R. to permit shopping center development instead of strip develop-

DIFFENDALL TRACT  
Points of Error and Change

It was and is error to divide the Diffendall Tract between BR and ML-IM for at least the following reasons:

1. BR to only a limited depth encourages the non-conforming auto uses to remain on the Eastern Boulevard frontage, and these uses are old, unsightly, and not conducive to upgrading of the area.
2. On the other hand, all BR zoning on the entire tract would foster modern redevelopment of the property with parking in front and retail uses on the middle and rear.
3. This modern redevelopment of the property for retail uses under the present Development Regulations would upgrade this site, and eliminate thousands of junked cars from the site, as well as upgrading the frontage uses.
4. There is already enough ML-IM and MH-IM in the area, in fact too much, while there is not a sufficient amount of BR commercial zoning.
5. Manufacturing and commercial zones on the same property were not and are not a good mix, and the property should have been properly zoned all BR commercial.
6. The BR and ML-IM division is very difficult to use and was not and is not good planning.
7. BR and ML-IM was a forced compromise and was not and is not correct zoning.
8. For such other and further errors and changes as shall be brought out in the course of this case.

CHARLOTTE DIFFENDALL - #R-87-39

ment. This concluded Petitioner's case.

People's Counsel presented only one witness to this Board, Mr. James G. Hoswell, Planner for Baltimore County. Mr. Hoswell testified that he has visited this site and that the zoning in this area is a mix of industrial, commercial and some residential. He further testified that since viable uses for the site have been provided that no error has been evidenced. He also testified that the Planning Department approves of the critical area aspects of this plan.

No other testimony was presented this day and the Board will note that there were no Protestants present. The above summary is in no way intended to indicate total testimony as the record will speak for itself, but is merely a condensed recap of testimony.

After careful consideration of all the testimony and evidence presented to the Board it is the Board's opinion that the petition should be granted. Certainly, the present uses are an eyesore and a detriment to any community. Apparently the County Council recognized this since they increased the proposed depth from 300 feet to 400 feet on Issue 7-50. It is unfortunate that this increase was a little shy and could prevent shopping center development. If the Council had before it, during the map process, the same information the Board has received, it would seem only logical to grant the necessary acreage to permit the development and remove the present conditions. It is the opinion of this Board that error on the zoning maps is quite possible accidentally, and in this case that is what occurred. To deny this small increase in the B.R. zoning already granted by the Council and, therefore, force the continued undesirable uses to exist or force the property into strip zoning user would not only not be to anyone's best interest but would be an arbitrary

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decision by this Board and not representative of the testimony presented.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of September, 1986, by the County Board of Appeals, ORDERED that the reclassification petitioned for of 3+ acres from M.L.-I.M. to a B.R. zone, as amended on Petitioner's site plan of July 30, 1986, be and the same is hereby GRANTED.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

LeRoy D. Spurrer  
LeRoy D. Spurrer

Patricia Phipps  
Patricia Phipps



placed in ML-IM, perhaps the most correct zoning for the frontage since the earlier "E" commercial. We assert that ML-IM was correct in 1962 for the frontage, as would have been BR, since the ML zone was cumulative and permitted the commercial uses permitted in the three commercial zones, as well as certain light industrial uses. Unfortunately, the commercial uses were removed from the ML zone by Bill 100 in 1970, was the first effective opportunity to remedy and review such sites being the 1971 zoning maps.

By virtue of Bill 100, the 1971 zoning of primarily ML-IM became erroneous in that it did not permit the automotive commercial uses on the frontage any longer, as to upgrading or improvement, nor did it permit a junk yard by special exception, which requires MH base zoning.

As testimony for the petitioner brought out, and as was buttressed by Mr. Hoswell, the zoning of the property when it was in the Sixth Councilmanic District in 1976, was clearly not properly done nor thought out. Petitioners' exhibit 14, the Log for Issue 6-67 in 1976, shows that the property was being considered by the Council for D.R. 16, ML-IM, BM or MH, or some combination thereof. At its single marathon map adoption meeting for the Sixth District and all other districts in the Fall of 1976, at a very late hour of the night, the Councilman for the Sixth District first proposed the property for all BM, a proper zone, but could not get a second, due to feared

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adverse commercial impact on ailing Essex and Dundalk. The Councilman after a very pregnant pause then proposed all of the property for D.R. 16, and again, no other Councilman came to his aid with a second. Finally, in desperation, and in an effort to move the meeting along, the Councilman proposed MH zoning, which was seconded and adopted without debate or discussion. Clearly, all BM zoning, which would have allowed the then proposed Diamond Point Mall or the now proposed Diamond Point Plaza, was the Councilman's first choice and we believe the correct zone then and now, either BM or BR in its entirety.

It was testified that no request for a change of the MH zone was made on the 1980 zoning maps. Mr. Fedder in his testimony attributed the lack of a request to the fact that no one was then proposing to make a better commercial use of the entire property or any substantial portion thereof. Thus, the property remained MH until the 1984 zoning maps, when two maps requests were made and subsequently modified. However, before covering these two requests, we should consider what the real estate market has proposed for this property in more modern times, that is since the late 1960's.

Mr. Diffendall testified that in the late 1960s and early 1970s Mr. Peter G. Angelos, a Baltimore area developer and attorney, and a group proposed to develop the property as

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Diamond Point Mall; but they were thwarted in their efforts by the erroneous adoption of MH in the very ill considered way outlined above on the 1976 maps.

The next all commercial, suitors for the property, (and there never have been any potential purchasers for the existing junk yard and/or outdated commercial uses), was a group known as Dulaney Real Estate with offices here in Towson. Dulaney Real Estate wished to develop the property for a number of commercial uses, and once again required all commercial zoning for the entire thirty-one acres. Unfortunately, as was testified to by Mrs. Diffendall, negotiations with the Dulaney Real Estate group proved unsuccessful, and they dragged on virtually almost to the very end of the 1984 mapping process.

At that point very late in the 1984 mapping process, Mr. Fedder entered the mapping picture, as to required minimum depth of commercial zoning of 600 feet of BR. Mr. Fedder communicated very candidly and very sensibly with Councilman O'Rourke by means of his letter dated November 12, 1984, which was introduced as petitioners' exhibit 15.

By means of this letter, which according to Mr. Fedder's testimony was given to Mr. O'Rourke only a short time before the Council voted and adopted the maps in mid-November of 1984, Mr. Fedder on behalf of the property owner reduced the

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requested zoning from all of the tract represented by Map Issue 7-32, to six hundred feet of BR zoning across the entire frontage of the property.

Mr. Fedder went on to state in the letter that at least six hundred feet was needed in order to flexibly develop the Diffendall property with new and attractive, major anchor tenant uses to take the place of the existing uses. Mr. Fedder's inability to develop an appropriate site plan with the three hundred ninety to four hundred feet of BR zoning ultimately granted from the incorrect centerline, rather than from the property line, demonstrates the correctness of Mr. Fedder's quick but accurate analysis, although he had just entered the picture.

Mr. Fedder also testified, as did several other witnesses, that the reason that the request in Map Item 7-62 was cut back from all BR zoning, (which we maintain is still the correct zoning), to six hundred feet of BR zoning, is because that is what we were told we might get, and you take what you can get in such cases.

It should be carefully noted that there is no natural divider on the ground on the Diffendall property, be it at the three hundred foot depth, the four hundred foot depth, or the six hundred foot depth, upon which to base a zoning division line between BR on the frontage and ML-IM in the rear. Mr. Fedder chose the six hundred foot depth based upon his

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development experience, which has proven correct. It should also be noted that this revised, map request item 7-62 replaced the original request for three hundred feet of BR zoning in Map Item 7-50. The latter request simply sought to conform or legitimize existing roadside uses, with none deeper than three hundred feet. If the Council's purpose was to accommodate new major, non-competitive uses, four hundred feet will not do it as shown by Mr. Fedder's testimony.

For a number of reasons, in fact, the four hundred feet of BR zoning is counter-productive and erroneous, including the fact that there is no natural boundary on the ground. Furthermore, four hundred feet in depth, as has been proven by this case, is insufficient for upgrading and redevelopment of the entire property, particularly with a flexible parking and use site plan for major tenants as required. Furthermore, both three hundred feet represented by Item 7-50 and four hundred feet as ultimately granted are of an insufficient depth to remove the junked automobiles on the rear portions of the property, particularly thirty-one acres.

However, and perhaps most importantly, according to Mr. Gavrelis and Mr. Fedder and other witnesses, four hundred feet is insufficient and erroneous to guarantee the development of non-competitive, large tenant uses like those proposed at Diamond Point Plaza. As previously noted, Mr. Gavrelis testified that the thirteen acres of BR zoning granted by the

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1984 maps would accommodate one hundred thirty thousand plus square feet of strip commercial with multiple driveway, shall depth fastfood, retail and service uses, all of which would be directly competitive with both Essex and Dundalk. Furthermore, this strip shallow depth commercial would effectively cut off redevelopment at the rear tract, and serve to perpetuate the existence of the junked automobiles and other debris on the rear.

Mr. Fedder testified very clearly that the property cannot be developed with four hundred feet from the incorrect centerline of Eastern Boulevard for a number of reasons. First of all, as was proven to him by his development experience and by his realtor, Mr. Trout, the major tenants have required an abundance of viable, close and visible effective parking in front of the proposed stores, including the two satellite areas of general retail in the two BR areas sought in this documented zoning case. Mr. Fedder testified that parking in the rear or on the side of commercial buildings has not proven effective and usable because of perceptions of safety, etc. at his revitalized Colonial Village Shopping Center in Pikesville, where he is locked into an existing site plan.

Mr. Fedder went on to testify that Columbia Design and Daft-McCune-Walker had done a very excellent job of fitting the major tenants into the frontage BR, with Pace being allowed in the rear on the ML-IM area pursuant to Case No. 86-97-SPH,

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decided by this Board earlier. Were it not for the Pace decision, this case would not work, and the site problems and Council error would be accentuated. Mr. Fedder testified, as did Mr. Gavrelis, that all three of these major anchors tenants, Pace, Rickels and Zayre's, all have very clear cut building envelopes or footprints that they must have in order to effectively develop a store. As previously noted, Columbia Design and Daft-McCune-Walker have done an outstanding design in accommodating the great bulk of these envelopes within the existing BR area, with only minor incursions into the documented areas. These real footprints cannot be accommodated without at least the minor map "fine tuning" proposed in this case.

Mr. Fedder went on to testify, as did Mr. Guckert, that no one had foreseen the need for a twenty-five to thirty foot widening of Eastern Boulevard, and that this twenty-five to thirty foot major widening, coupled with the fact that zoning ran from the centerline of the 1954, smaller street (obviously unknown to Mr. Fedder and Councilman O'Rourke), further hampers development of the property. Since there was no design available, Mr. O'Rourke and the Council, as well as the Diffendalls, could not have known of the need for this widening, nor were the Diffendalls and Mr. Fedder in any way responsible for the incorrect configuration of Eastern Boulevard on the 200 scale zoning maps.

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Mr. Fedder also emphasized that development of the property for the proposed Diamond Point Plaza is not feasible from an economical or physical standpoint with the present zone boundaries.

Mr. Gavrelis from his investigation with the Planning Staff discovered that one of the major objectives of the 1984 zoning maps only providing BR to a depth of four hundred feet was to protect Essex and Dundalk from additional commercial competition. However, as we have pointed out, the four hundred foot strip has exactly the opposite effect in that a four hundred foot strip, thirteen acres in size could accommodate one hundred thirty-one thousand square feet of strip commercial, with smaller stores, fastfoods, all with multiple access points, very harmful to both Essex and Dundalk.

Bear in mind as well, that we are dealing with the adjustment of a line between two fairly close zones, namely, an industrial zone and a commercial zone, and we are not going from residential to commercial or industrial. In fact, the request of 2.733 acres of BR actually represents a downshift of this ML-IM property in the rear, since commercial is usually considered to be less intensive than a manufacturing zone. As Mr. Gavrelis says, the requested 2.73 acres represents a "fine tuning" of the 1984 maps.

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Furthermore, the petitioners in this case have reduced their request from on the order of seventeen acres of undocumented BR to 2.733 acres of documented BR, and they have been very open and honest with the Board about the rest of the tract.

Mr. Fedder has stated that, in fact, the plan as offered in evidence, petitioners' exhibit 3, is now in the process of being turned into a CR3 plan and is about to be filed. Thus, even outside of the documented areas, the Board has major assurances other than Mr. Fedder's word and good reputation that Diamond Point Plaza will be built as closely as possible to petitioners' exhibit 3, as working through the CRG and marketing processes will permit.

As for case support for the petitioners' position, we believe that the errors summarized above meet the requirements laid down in Boyce vs. Sembly, 25 Md. App. 43 at page 51 and following.

The Council could not have taken into account the actual configuration and location of Eastern Boulevard and Diamond Point Road, since they were both inaccurately and incompletely shown on the 200 scale base zoning map.

In granting about a four hundred foot depth of BR zoning from the incorrect centerline, the Council failed to take into account the required twenty-five to thirty foot widening of Eastern Boulevard. This twenty-five to thirty foot required

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improvement to Eastern Boulevard was not known to the Council, to the Diffendalls, to Mr. Fedder or anyone since it was only discovered by Mr. Guckert upon a detailed traffic analysis. The effect of the thirty foot widening is to make the four hundred foot minus granted even more erroneous, since three hundred seventy to three hundred seventy-five feet in depth is even less useable and more potentially directly competitive.

In Boyce, supra at page 51, some four cases are cited for the proposition that rezoning can be based upon an original misapprehension by the Council.

"Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. Bonnie View Club v. Glass, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Jobar Corp. v. Rodgers Forge Community Ass'n, 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); see Rohde v. County Board of Appeals, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964)."

There was a major misapprehension by the Council as to the major competitive detrimental effects of three hundred ninety to four hundred feet of BR zoning, (ie. competitive strip commercial detrimental to Essex and Dundalk) versus the benefits and correctness of the six hundred feet requested by Mr. Fedder in his letter of November 12, 1984 to the Council, petitioners' exhibit 15. If the Council's intent was to protect Dundalk and Essex from competitive strip commercial,

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then four hundred feet or less of BR had the exact opposite effect by encouraging up to one hundred thirty-one thousand square feet of new directly competitive fastfoods, small retail and service stores with a junk yard in the rear.

The efforts of Mr. Fedder and his planners at Columbia Design and Daft-McCune have proven that three major, non-competitive, anchor tenants cannot be accommodated in four hundred feet or less of BR zoning, with the widening from an incorrectly located centerline. See Rockville vs. Stone, 271 Md. 655, at page 662, wherein the Court of Appeals said:

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."

Finally, in Missouri Realty, Inc. vs. Ramer, 216 Md. 442, at page 449, the Court of Appeals stated that the usual reclassification situation is somewhat different wherein the reclassification is one from one residential subcategory to another, ie. even an upshift from R.G to R.G, the equivalent of from D.R.5.5 to D.R.10.5. Certainly this statement by the Court lends even more support to the requested downshift here from ML-IM, an industrial zone to BR, a commercial zone in two small, documented areas.

In summary we know the 1984 maps were in error for at least the following reasons:

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1. The base 200 scale maps were and are incorrect as to the two roads, Eastern Boulevard and Diamond Point Road and other actual ground conditions.

2. If the Council wanted to legitimate the existing roadside uses, it could have been done by means of granting three hundred feet requested in Item 7-50, but four hundred feet, if meant to accommodate new uses, will not do so, and is erroneous.

3. The objective of new BR zoning was to suit new major, non-competitive anchor tenant uses not harmful to Essex or Dundalk, and four hundred feet has exactly the opposite effect, as noted.

4. The four hundred feet depth would only accommodate highly competitive and injurious, minor strip commercial stores, directly contrary to the Council's imputed intent.

5. The BR zone is less than the ML-IM zone and represents a "fine tuning" to accommodate large tenant, non-competitive uses, like those proposed.

6. The granted four hundred feet of zoning would compete with Essex without completely cleaning up the gateway to Essex, as will the proposed staff and Planning Board and Administration endorsed Diamond Point Plaza.

#### CONCLUSION

For all of these reasons, we respectfully ask that the Board of Appeals, in recognition of the map errors noted, and

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in recognition of the major benefits, (including the removal of all of the older uses, both front and rear, and all of the junked automobiles), as well as major, non-competitive benefits to both the Essex and Dundalk areas, including the positive benefit of the clean-up the gateway of Essex, that the requested 2.733 acres of documented BR be granted by this Board, as requested by the petitioner/land owner, Charlotte Diffendall, and by the petitioner/contract purchaser and prospective developer, Mr. Joel D. Fedder.

Respectfully submitted,  
Nolan, Plumhoff & Williams,  
Chartered

*Newton A. Williams*  
Newton A. Williams

#### CERTIFICATE OF SERVICE

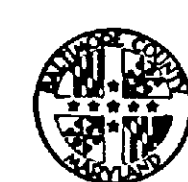
I HEREBY CERTIFY, that on this 15th day of September, 1986 a copy of this foregoing Petitioners' Memorandum In Support of Requested, Limited, Documented BR was mailed, postage prepaid to: Phyllis C. Friedman, Peoples Counsel and Peter M. Zimmerman, Dupty Peoples Counsel, Court House, Towson, Maryland 21204.

*Newton A. Williams*  
NEWTON A. WILLIAMS

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& WILLIAMS,  
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0044A

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County Board of Appeals of Baltimore County  
Room 200 Court House (Hearing Room #218)  
Towson, Maryland 21204  
(301) 494-3180  
August 1, 1986

#### NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. R-87-39

CHARLOTTE DIFFENDALL

NW/4 Eastern Blvd., 65' SW of c/l  
of Diamond Point Road

15th District

ML-IM to B.R.

SCHEDULED FOR:

TUESDAY, AUGUST 26, 1986, at 10 a.m.

cc: Newton A. Williams, Esq. Counsel for Petitioner

Charlotte Diffendall Petitioner

Joel Fedder Contract Purchaser

James E. Kraft

Phyllis C. Friedman People's Counsel for Balto. County

Milton and Ida Tancibok

Mrs. Nancy M. Leiter

Russell Mirabile

Matko Lee Chullin

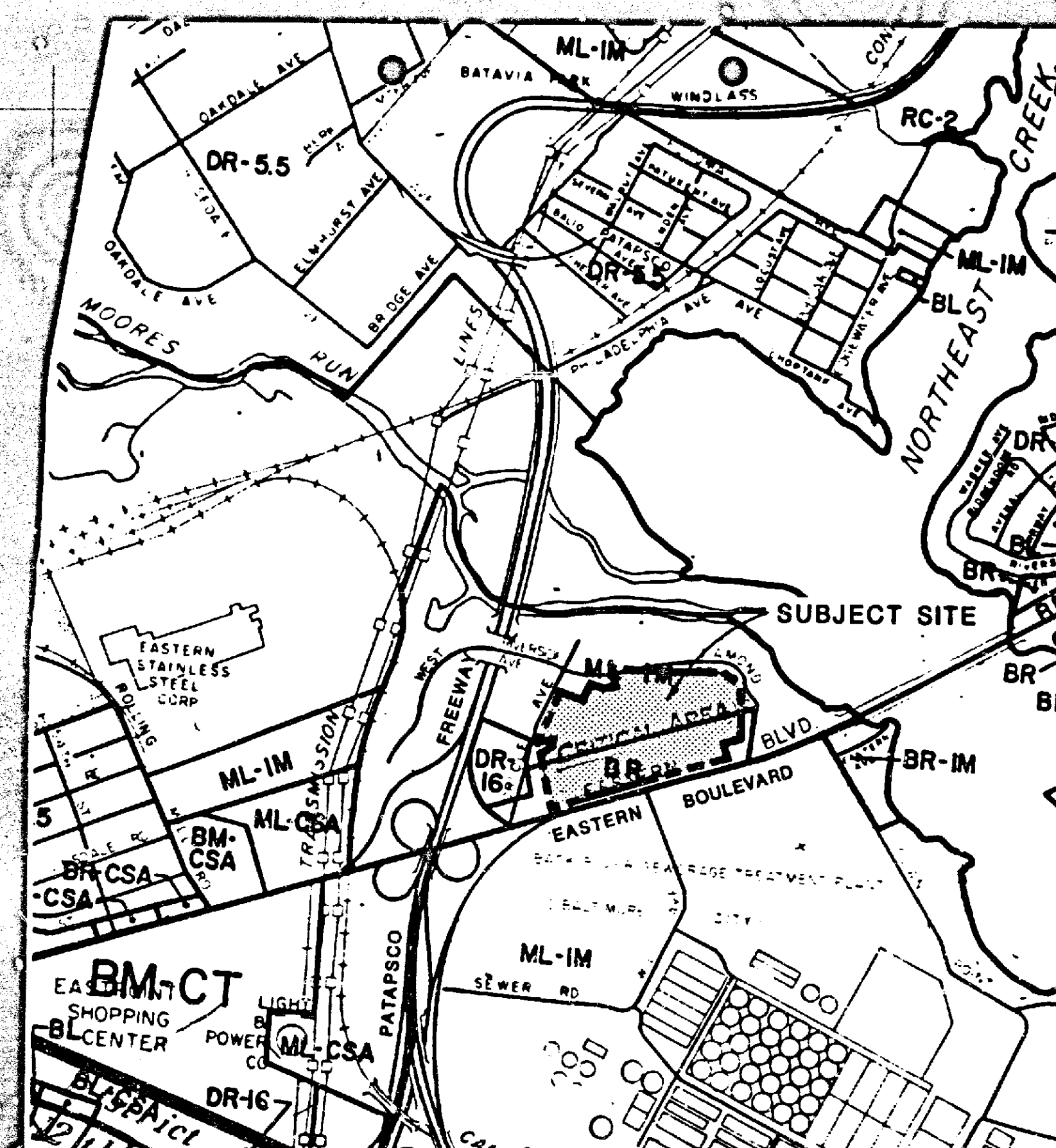
Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James E. Dyer



ML-IM TO BR RECLASSIFICATION REQUEST  
PORTION OF ZONING MAP 4B

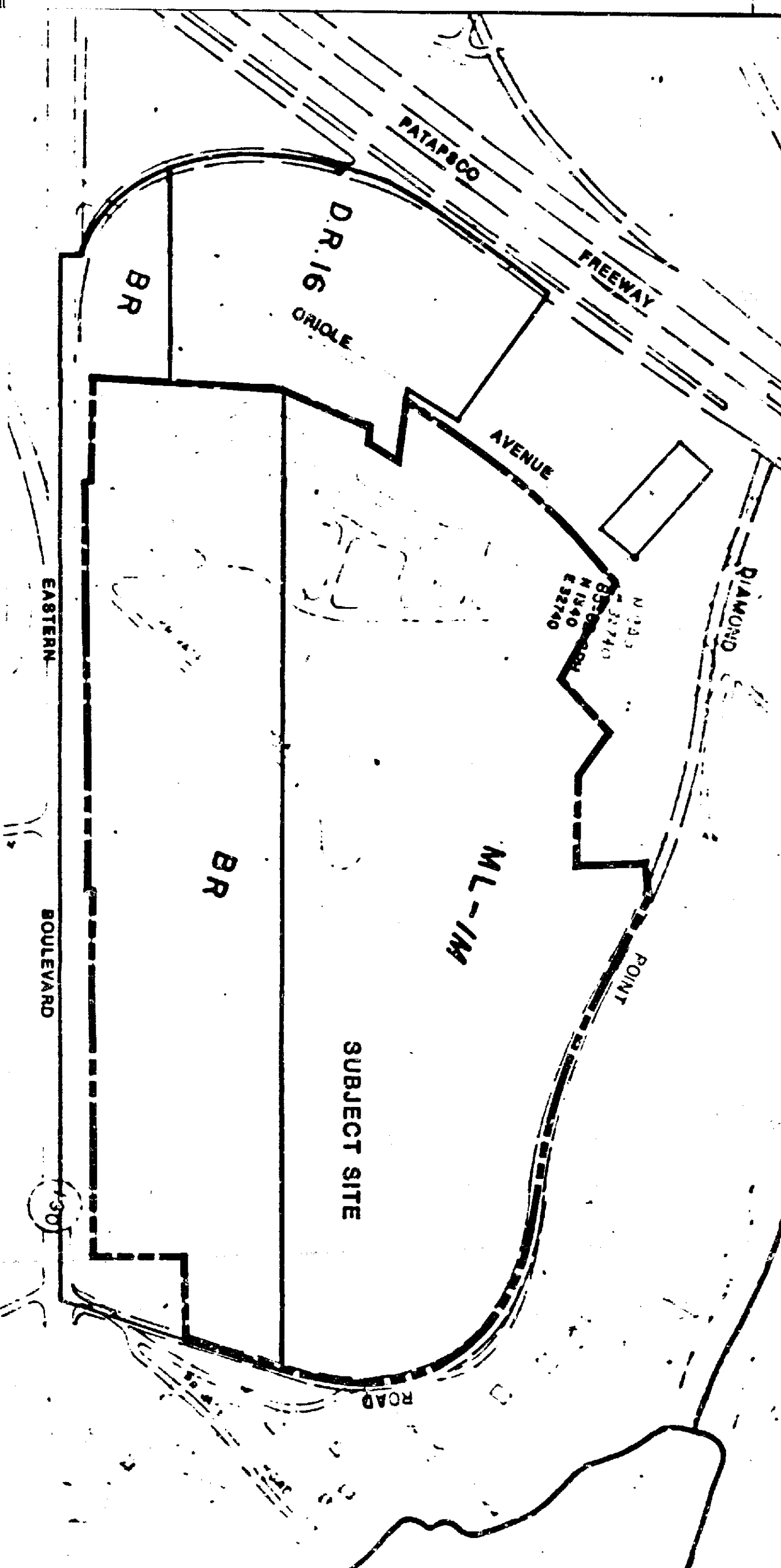
J.C. 85122

SCALE: 1" = 1'

J.C. 85122

ML-IM TO BR RECLASSIFICATION REQUEST  
PORTION OF MAP NE-1F

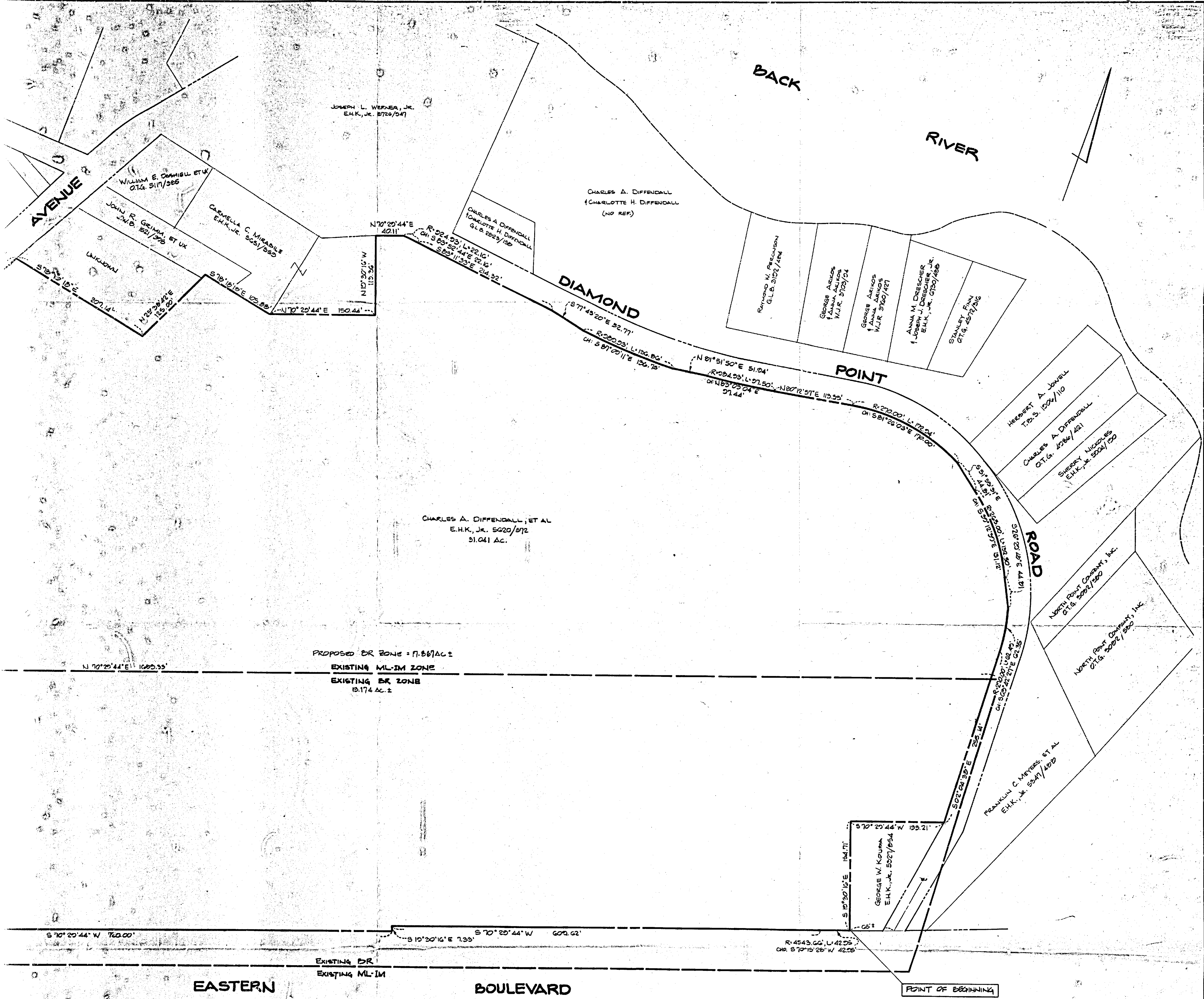
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APR 14 1987

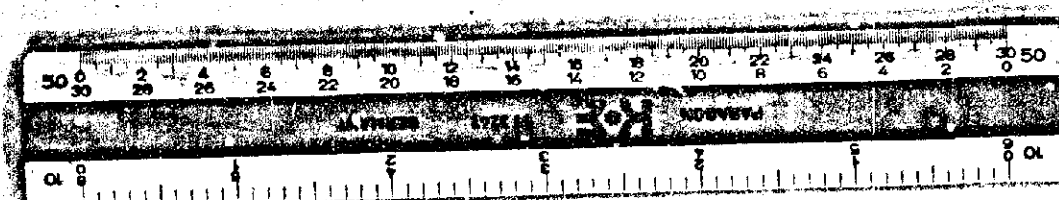
June Holmen, Secretary





EASTERN

BOULEVARD

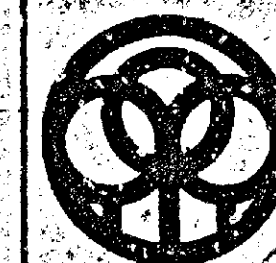


Robert B. Smith

PLAT TO ACCOMPANY  
PETITION  
FOR  
ZONING RECLASSIFICATION  
ML-IM TO BR

15<sup>TH</sup> ELECTION DISTRICT  
BALTIMORE COUNTY, MD.  
89122 1"=50' FEB. 27, 1996

CRITICAL AREA  
III-20  
PRINTED  
FEB 23 1996  
NORTH MCDONALD & SONS



DAFT, McCune, WALKER, INC.  
LAND PLANNING CONSULTANTS  
LANDSCAPE ARCHITECTS  
ENGINEERS & SURVEYORS  
300 E. PENNSYLVANIA AVE.  
TORRISON, WY. 82434  
TELEPHONE (304) 246-2323

THIS PLAT HAS BEEN PREPARED FROM DEEDS AND OTHER  
TITLE SOURCES AND DOES NOT REPRESENT A SURVEY OF THE PROPERTY.







PETITION FOR RECLASSIFICATION

LOCATION: Northwest Side of Eastern Boulevard, 65 feet Southwest of the Centerline of Diamond Point Road

PUBLIC HEARING: Wednesday, July 30, 1986, at 9:30 a.m.  
Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

To reclassify the zoning status of property from an M.L.-I.M. Zone to a B.R. Zone

All that parcel of land in the 15th Election District of Baltimore County

17.867 Acres Parcel for  
Zoning Reclassification  
North Side Eastern Boulevard between Oriole Avenue  
and Diamond Point Road  
Fifteenth Election District, Baltimore County, Maryland

Beginning for the same at a point on the northerly right-of-way line of Eastern Boulevard, said point being situated 65 feet more or less from the intersection formed by the centerline of Diamond Point Road and the northerly right-of-way line of Eastern Boulevard and running thence along the northerly side of Eastern Boulevard the six following courses and distances viz; (1) westerly by a line curving to the right 42.95 feet (said curve having a radius of 4543.66 feet and a chord bearing South 70 degrees 13 minutes 28 seconds West 42.95 feet), thence (2) South 70 degrees 29 minutes 44 seconds West 609.62 feet, thence (3) South 19 degrees 30 minutes 16 seconds East 7.33 feet, thence (4) South 70 degrees 29 minutes 44 seconds West 720.00 feet, thence (5) North 19 degrees 30 minutes 16 seconds West 7.33 feet, and thence (6) South 75 degrees 10 minutes 52 seconds West

122.84 feet, thence leaving the northerly side of Eastern Boulevard and running the seven following courses and distances viz; (7) North 19 degrees 30 minutes 16 seconds West 308.35 feet, thence (8) North 07 degrees 09 minutes 59 seconds West 40.95 feet, thence (9) North 05 degrees 47 minutes 05 seconds East 165.90 feet, thence (10) North 19 degrees 30 minutes 16 seconds West 15.00 feet, thence (11) North 70 degrees 29 minutes 44 seconds East 34.09 feet, thence (12) North 05 degrees 47 minutes 09 seconds East 55.30 feet, and thence (13) South 70 degrees 29 minutes 44 seconds West 120.88 feet to the southeasterly side of Oriole Avenue, thence binding on the southeasterly side of Oriole Avenue the three following courses and distances viz; (14) North 11 degrees 35 minutes 55 seconds East 120.42 feet, thence (15) Northeasterly by a line curving to the right 284.00 feet (said curve having a radius of 1026.83 feet and a chord bearing North 19 degrees 31 minutes 20 seconds East 283.10 feet), and thence (16) North 27 degrees 26 minutes 45 seconds East 65.12 feet, thence leaving the southeasterly side of Oriole Avenue and running the six following courses and distances viz; (17) South 78 degrees 18 minutes 18 seconds East 207.14 feet, thence (18) North 25 degrees 38 minutes 42 seconds East 125.00 feet, thence (19) South 78 degrees 18 minutes 18 seconds East 105.88 feet, thence (20) North 70 degrees 29 minutes 44 seconds East 150.44 feet, thence (21) North 19 degrees 30 minutes 16 seconds West 113.36 feet and thence (22) North 70 degrees 29 minutes 44 seconds East 40.11 feet to intersect the south side of Diamond Point Road, thence binding on the south and westerly sides of Diamond Point Road the thirteen following courses and distances viz; (23) easterly by a line curving to the right 22.16 feet (said curve

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having a radius of 924.93 feet and a chord bearing South 83 degrees 52 minutes 44 seconds East 22.16 feet), thence (24) South 83 degrees 11 minutes 33 seconds East 214.32 feet, thence (25) South 77 degrees 45 minutes 20 seconds East 52.77 feet, thence (26) easterly by a line curving to the left 136.86 feet (said curve having a radius of 989.93 feet and a chord bearing South 87 degrees 09 minutes 11 seconds East 136.75 feet), thence (27) North 81 degrees 51 minutes 50 seconds East 51.94 feet, thence (28) Easterly by a line curving to the left 97.50 feet (said curve having a radius of 984.93 feet and a chord bearing North 83 degrees 03 minutes 04 seconds East 97.44 feet, thence (29) North 80 degrees 12 minutes 57 seconds East 113.33 feet, thence (30) southeasterly by a line curving to the right 172.94 feet, (said curve having a radius of 270.00 feet and a chord bearing South 81 degrees 26 minutes 03 seconds East 170.00 feet), thence (31) South 51 degrees 55 minutes 31 seconds East 44.81 feet, thence (32) Southeasterly by a line curving to the right 132.50 feet (said curve having a radius of 265.00 feet and a chord bearing South 39 degrees 12 minutes 39 seconds East 131.12 feet), thence (33) South 26 degrees 29 minutes 48 seconds East 44.81 feet, thence (34) Southerly by a line curving to the right 62.49 feet (said curve having a radius of 270.00 feet and a chord bearing South 08 degrees 42 minutes 27 seconds East 62.35 feet), and thence (35) South 02 degrees 04 minutes 38 seconds East

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255.14 feet, thence leaving the aforementioned westerly side of Diamond Point Road and running the two following courses and distances, viz; (36) South 70 degrees 29 minutes 36 seconds West 133.21 feet and thence (37) South 19 degrees 30 minutes 16 seconds East 154.71 feet to the point of beginning.

Containing 31.041 acres of land more or less.

Saving and excepting from the above described parcel 13.174 acres of land which are in an existing BR Zone.

Beginning for the same at a point on the northerly right-of-way line of Eastern Boulevard, said point being situated 65 feet more or less from the intersection formed by the centerline of Diamond Point Road and the northerly right-of-way line of Eastern Boulevard and running thence along the northerly side of Eastern Boulevard the six following courses and distances viz; (1) westerly by a line curving to the right 42.95 feet (said curve having a radius of 4543.66 feet and a chord bearing South 70 degrees 13 minutes 28 seconds West 42.95 feet), thence (2) South 70 degrees 29 minutes 44 seconds West 609.62 feet, thence (3) South 19 degrees 30 minutes 16 seconds East 7.33 feet, thence (4) South 70 degrees 29 minutes 44 seconds West 720.00 feet, thence (5) North 19 degrees 30 minutes 16 seconds West 7.33 feet, and thence (6) South 75 degrees 10 minutes 52 seconds West 122.84 feet, thence leaving the northerly side of Eastern Boulevard and running the two following courses and distances viz; (7) North 19 degrees 30 minutes 16 seconds West 308.35 feet, thence (8) North 07

Page 4 of 5

degrees 09 minutes 59 seconds West 40.95 feet to intersect the line dividing the land zoned BR and ML-IM as shown on the Comprehensive Zoning Maps for Baltimore County, thence running along said line, (9) North 70 degrees 29 minutes 44 seconds East 1683.33 feet, to intersect the above described 35th line, thence binding on a part of said 35th line and on the 36th and 37th lines, (10) South 02 degrees 04 minutes 38 seconds East 213.25 feet, thence (11) South 70 degrees 29 minutes 36 seconds West 133.21 feet, and thence (12) South 19 degrees 30 minutes 16 seconds East 154.71 feet to the point of beginning.

Containing 13.174 acres of land more or less.

The net area to be reclassified as BR zone is 17.867 acres of land more or less.

Being the property of Charlotte Diffendall  
as shown on the plat plan filed with the Zoning Department.

BY ORDER OF  
WILLIAM T. HACKETT, CHAIRMAN  
COUNTY BOARD OF APPEALS  
BALTIMORE COUNTY

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS  
FROM ML-IM TO BR ZONE  
NW/4 Eastern Blvd., 65' SW : OF BALTIMORE COUNTY  
of C/L of Diamond Point Rd.,  
15th District :

CHARLOTTE DIFFENDALL, Petitioner: Zoning Case No. R-87-39

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 10th day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esquire, Nolan, Plumhoff & Williams, Chartered, 204 W. Pennsylvania Ave., Towson, MD 21204; and Joel Fedder, 514 N. Crain Highway, Glen Burnie, MD 21061, Contract Purchaser.

*Peter Max Zimmerman*  
Peter Max Zimmerman

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT		No. 021822	
DATE 8/15/86	ACCOUNT R-01-615-000	MEMO RECEIVED AUG 15 1986 ZONING OFFICE	
AMOUNT \$479.96 Mr. Joel D. Fedder, The Fedder Co., 514 N. Crain Highway, Glen Burnie, Md. 21061		RECEIVED COUNTY BOARD OF APPEALS AUG 18 1986	
ADVERTISING & POSTING COSTS RE CASE NO. R-87-39 (Item No. 29, Cycle III - Approved Out of Cycle)		RECEIVED COUNTY BOARD OF APPEALS AUG 20 1986	
B BCS*****479961a 3151F		TER/hlt Enclosure	
In accordance with Mr. Jablon's enclosed letter of August 7, 1986, please find a check in the amount of \$479.96 noted due to the Baltimore County Zoning Office.		Thank you for your cooperation in this regard. Sincerely, <i>William E. Rosenblatt</i> William E. Rosenblatt, Vice President	
If you have any further questions, please contact the writer at (301) 768-4100.		cc: Joel D. Fedder Newton A. Williams, Esq.	



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

August 7, 1986

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/4 Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 29, Cycle III  
Case No. R-87-39 (Out of Cycle)

Dear Mr. Williams:

We acknowledge receipt of your letter of August 4, 1986, concerning this case. This letter is to further clarify the exact costs which are due this office in connection with this reclassification case.

IN CYCLE III COSTS - \$140.46 - for 2 full page advertisements depicting petitioners, item nos. in Cycle III, map and locations of various properties in Cycle III - in 2 separate newspapers

OUT OF CYCLE COSTS DUE - \$339.50

GRAND TOTAL DUE THE ZONING OFFICE - \$479.96

Please make your check payable to "Baltimore County, Maryland", in the amount of \$479.96 and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:med

ccs: Joel D. Fedder, Esquire  
Baltimore County Board of Appeals

RECEIVED  
COUNTY BOARD OF APPEALS  
AUG 11 1986



LAW OFFICES  
**NOLAN, PLUMHOFF & WILLIAMS**  
CHARTERED  
204 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204  
(301) 823-7600

OF COUNSEL  
RALPH E. DEITZ  
9026 LIBERTY ROAD  
RANDALLSTOWN, MARYLAND 21133  
(301) 822-2121  
RUSSELL J. WHITE

August 4, 1986

RECEIVED  
AUG 5 1986  
ZONING OFFICE

Joel D. Fedder, Esquire  
514 N. Crain Highway  
Glen Burnie, Maryland 21061

Re: Advertising Costs in the  
Amount of \$140.46 Due  
for the Diffendall Property

Dear Joel:

Please find enclosed a copy of a letter dated July 21, 1986 from Commissioner Jablon regarding a fee in the amount of \$140.46 to cover advertising for the Diffendall tract.

Even though the Planning Board removed us from the cycle, notice of the property did appear twice, namely, on April 24, 1986 and May 1, 1986, as noted in the letter.

It will be greatly appreciated if you will direct your payment to Ms. duBois of the Zoning Office. Thank you for your prompt attention to this matter.

With best regards, I am

Sincerely,  
*Newton*  
Newton A. Williams

NAW:ylm  
Enclosure  
cc: Ms. Margaret E. du Bois

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

June 20, 1986  
July 21, 1986 SECOND REQUEST

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 20, Cycle III

Dear Mr. Williams:

This is to advise you that although the County Council approved the Petition for Reclassification be withdrawn from Cycle III and placed out of cycle, as of May 3, 1986, you are still liable for a portion of two full page advertisements which were required to have published on April 24, 1986 and May 1, 1986 concerning this reclassification matter.

Please make your check payable to "Baltimore County, Maryland", in the amount of \$140.46 and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:mcd  
cc: Baltimore County Board of Appeals

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

June 20, 1986

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Item No. 20, Cycle III

Dear Mr. Williams:

This is to advise you that although the County Council approved the Petition for Reclassification be withdrawn from Cycle III and as of May 3, 1986, you are still liable for advertisements which were required to have published on April 24, 1986 and May 1, 1986 concerning this

payable to "Baltimore County, Maryland", remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Sincerely,  
*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

Appeals

7/30  
Time: 9:30 a.m.  
# R-87-39

WHILE YOU WERE OUT

To: [blank]  
Date: [blank]  
M: [blank]  
C: [blank]  
Phone: [blank]

TELEPHONED [ ] PLEASE CALL [ ]  
CALLED TO SEE YOU [ ] WILL CALL AGAIN [ ]  
WANTS TO SEE YOU [ ] URGENT [ ]

RETURNED YOUR CALL [ ]

Name: *Newton Williams*  
Address: *204 West Pennsylvania Ave*  
City: *Towson*  
State: *MD*  
Zip: *21204*

Case # *R-87-39*

Cambridge 08301

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 10 1986

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, MD, appearing on July 10, 1986.

THE JEFFERSONIAN,  
*Susan Stender O'Brien*  
Publisher

126-50

Newton A. Williams, Esquire  
Nolan, Plumhoff & Williams, Chartered  
204 West Pennsylvania Avenue  
Towson, Maryland 21204

June 27, 1986

NOTICE OF HEARING

RE: PETITION FOR ZONING RECLASSIFICATION  
NW/S Eastern Blvd., 65' SW of the c/l of  
Diamond Point Rd.  
15th Election District  
Charlotte Diffendall - Petitioner  
Case No. R-87-39  
(Item No. 20, Out of Cycle III)

TIME: 9:30 a.m.  
DATE: Wednesday, July 30, 1986  
PLACE: Room 218, Courthouse, Towson, Maryland

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCIAL & REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 218442

DATE: 7/29/86

AMOUNT: \$100.00

PAID TO: *Nolan, Plumhoff & Williams*

PAID FOR: *Diffendall*

8 8731 \*\*\*\*\* 1000016 8285F

County Council of Baltimore County  
Court House, Towson, Maryland 21204  
(301) 494-3195

COUNCIL

Ronald B. Hickernell  
FIRST DISTRICT

Gary Huddles  
SECOND DISTRICT

Charles A. Rappaport, III  
THIRD DISTRICT

Barbara F. Baskin  
FOURTH DISTRICT

Norman W. Lauenstein  
FIFTH DISTRICT, CHAIRMAN

Ernest W. Gallagher  
SIXTH DISTRICT

John W. O'Rourke  
SEVENTH DISTRICT

Thomas Toporovich  
SECRETARY

May 12, 1986

William T. Hackett, Chairman  
Baltimore County Board of Appeals  
Court House  
Towson, Maryland 21204

Dear Mr. Hackett:

This is to advise you that the County Council, at their meeting on Monday, May 5, 1986, approved the Planning Board's motion certifying that early action on the Diffendall/Fedder Zoning Reclassification Petition would be in the public interest.

Sincerely yours,  
*Thomas Toporovich*  
Thomas Toporovich  
Secretary

TT:dp  
Enclosure  
cc: Norman Gerber  
Newton Williams

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 1524  
Posted for: *Reclassification*  
Petitioner: *Charlotte Diffendall*  
Location of property: *NW/S Eastern Blvd., 65' SW of Diamond Pkwy*  
Location of Signs: *All signs same location as Eastern Blvd Diamond Pkwy & Circle Dr*  
Remarks: *As above*  
Posted by: *A. Williams*  
Number of Signs: 3

Date of Posting: 7/15/86  
Date of return: 7/25/86

RECEIVED  
COUNTY BOARD OF APPEALS  
NO JUN 24 P 11:22 C

RECEIVED  
COUNTY BOARD OF APPEALS  
NO JUN 12 A 11:16 C

RECEIVED  
COUNTY BOARD OF APPEALS  
NO JUN 12 A 11:16 C







## BALTIMORE COUNTY PLANNING BOARD

## RESOLUTION

April 17, 1986

WHEREAS, Pursuant to Subsection 2.58.1(i) of the Baltimore County Code 1979 as amended, the Baltimore County Planning Board has reviewed the request by Charlotte Diffendall, et al to exempt from the zoning cycle the subject reclassification petition; and

WHEREAS, The Planning Board believes that early action is required on this petition to provide for consideration of the timely development and benefits therefrom; therefore, be it

RESOLVED, That the Baltimore County Planning Board hereby certifies to the County Council of Baltimore County that early action on the subject Zoning Reclassification Petition would be in the public interest.

I HEREBY CERTIFY that the above resolution was duly adopted by the Baltimore County Planning Board at its meeting in Towson, Maryland, on April 17, 1986.

Date 4/27/86

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Secretary of the Baltimore County  
Planning Board

## BALTIMORE COUNTY PLANNING BOARD

## RESOLUTION

August 21, 1986

WHEREAS, Pursuant to Subsection 2.58.1(m) of the Baltimore County Code, the Baltimore County Planning Board has reviewed the amended zoning reclassification petition for the Charlotte Diffendall, et al property; and

WHEREAS, The Planning Board was supportive of this exempted petition in its original form; and

WHEREAS, The Planning Board is supportive of the subject request as amended; therefore be it

RESOLVED, That the Baltimore County Planning Board recommends that the petitioner's request be granted.

I HEREBY CERTIFY that the above resolution was duly adopted by the Baltimore County Planning Board at its meeting in Towson, Maryland, on August 21, 1986.

Date 8/22/86

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Secretary to the Baltimore County  
Planning Board

COUNTY BOARD OF APPEALS  
RE: AUG 22 A D 36 E

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

William T. Hackett, Chairman  
TO: County Board of Appeals Date: August 22, 1986

Norman E. Gerber, AICP, Director  
FROM: Office of Planning and Zoning

Zoning Reclassification Petition No. R-87-39  
SUBJECT: Property of Charlotte Diffendall, et al.

This property, a small part of a total site of 31 acres zoned B.R. and M.L.-I.M., is located on the north side of Eastern Boulevard at Diamond Point Road opposite the Back River Sewerage Treatment Plant. The original request for a zoning reclassification to B.R. for the 17-acre portion of the site currently zoned M.L.-I.M. was exempted from cyclical procedures on May 5, 1986 by the Baltimore County Council. The original petition was amended at open hearing before the County Board of Appeals on July 30, 1986. The current petition requests a change from M.L.-I.M. to B.R. zoning for two parcels of land containing a total of 2.73 acres, and the petitioner has chosen to submit documented plans.

Prior to the 1984 Comprehensive Zoning Map process, the entire 31-acre property was zoned M.H. During the preparation and processing of the map, the zoning of this property was identified as an issue before the County Council (Item No. 7-50). At that time the petitioner requested a change from M.H. to the B.R. and M.L.-I.M. zoning classifications. The petitioner requested B.R. zoning for a portion of the property along Eastern Boulevard; the Planning Board recommended a lesser amount of B.R. zoning. The County Council adopted B.R. zoning to a lesser depth from Eastern Boulevard than requested, and M.L.-I.M. zoning for the remainder of the site.

To say that the subject property has been a problem site over the years is an understatement. Junked autos, a series of ramshackle structures, oil, grease and general debris cover the site. In addition to the visual ugliness, the site has been a constant source of pollutants along the shoreline. The proposal is to clear the entire property and construct a modern shopping center. Needless to say, this office is supportive of the proposal.

This property is within the boundaries of the area governed by the Chesapeake Bay Critical Area legislation. Although no formal CAG application has been made, a full Critical Area report has been submitted to and reviewed by this office. The following are excerpts from office correspondence from May and June of this year, relating to the proposal for the entire 31-acre site:

To satisfy the need for revegetation, the applicant has proposed a minimum 50-foot vegetated buffer around most of the site (3.3 acres total), expanded parking islands and roadsides (2.5 acres total), and the acquisition of property between the site and the Back River

CPS-008

William T. Hackett  
August 22, 1986  
Page 2

shoreline (5.5 acres total), which would be completely reforested. This kind of restoration would be a substantial improvement over the present condition and is consistent with the goals of the Critical Area legislation for habitat preservation in intensely developed areas.

With regard to water quality, the applicant is proposing a stormwater management pond, located in the northeast corner of the site and capable both of infiltrating the first inch of rainfall and of reducing post-development pollutant loadings to a minimum of 26% less than those of existing levels. Although Public Works must confirm that the final engineering plan for the stormwater management system can, in fact, achieve the stated levels of pollutant reduction, conceptually, the plan meets all County and State criteria for stormwater management in the Critical Area. Furthermore, it would ameliorate what is now an actively polluting condition.

In general, the proposed development would not only meet the fundamental requirements and intent of the Critical Area legislation but would also correct an extremely degraded situation. It is, therefore, recommended that Critical Area approval be granted for the proposed Diamond Point Plaza concept plan with the following specific requirements:

- 1) Stormwater discharge from the pond must be at non-erosive rates.
- 2) The discharge channel must be stabilized.
- 3) A reevaluation will need to be made if the applicant is unable to purchase the parcels for reforestation.

In general we think the proposed Diamond Point Plaza will make a significant contribution to the upgrading of the Back River area . . .

This office is in receipt of correspondence from the Essex Development Corporation supporting the construction of the proposed shopping center and stating, in part, that "the physical improvements and types of anchor stores proposed would improve the entry to Essex and increase the marketability of our own portion of Eastern Boulevard, which is not appropriate for such large commercial facilities." Further, "removal of the current facilities at Diamond Point Road and improvement with quality development such as the proposed shopping

William T. Hackett  
August 22, 1986  
Page 3

center would greatly enhance our community". Finally, the Baltimore County Economic Development Commission supports the development of the shopping center here.

It is this office's opinion that the redevelopment of this site as proposed by the petitioner will be of benefit to Baltimore County and that the subject petition should be granted.

*Norman E. Gerber*  
NORMAN E. GERBER, AICP  
Director

NEG:slm

cc: Newton A. Williams, Esq.  
Attorney for the Petitioner  
Phyllis Cole Friedman  
People's Counsel

Baltimore County Office of Planning and Zoning  
August 13, 1986

WORK SESSION AND REGULAR MEETING  
of the  
BALTIMORE COUNTY PLANNING BOARD  
held on  
THURSDAY, AUGUST 21, 1986  
in  
Room 106, County Office Building

\*\*\*\*\*

WORK SESSION  
ad hoc Committee on Development Plans and Issues  
Mr. Worrall, Chairman

## TIME

## AGENDA

- 5:15 p.m. 1. Call to Order - Mr. Worrall
- 5:16 p.m. 2. Charlotte Diffendall Property Reclassification - Documented Site Plan referred to Planning Board by Board of Appeals.

\*\*\*\*\*

REGULAR MEETING  
of the  
BALTIMORE COUNTY PLANNING BOARD  
Mr. Dryden, Chairman

- 5:30 p.m. 1. Call to Order - Mr. Dryden
- 5:31 p.m. 2. Introduction of Board members and announcements
- 5:32 p.m. 3. Review of Agenda
- 5:33 p.m. 4. Citizen Comment
- 5:38 p.m. 5. Minutes of meeting of July 17, 1986
- 5:39 p.m. 6. Charlotte Diffendall Property Reclassification - Documented Site Plan - recommendation of ad hoc Committee on Development Plans and Issues
- 5:45 p.m. 7. Notification to Planning Board of potential conflict with Master Plan: Cunningham Cove Section II
- 5:47 p.m. 8. "Lakeside" PUD - recommendation by ad hoc Committee on Master Plan and Zoning Map
- 6:10 p.m. 9. Other Business

DINNER  
6:30 p.m.

\*\*\*\*\*

Note: Copies of agenda, with enclosures, if any, will be available for public inspection on Monday, August 18, 1986, at the following Baltimore County Public Libraries: Arbutus, Catonsville, Cockeysville, Essex, Loch Raven, North Point, Parkville, Perry Hall, Pikesville, Randallstown, Reisterstown, Rosedale, Towson and Woodlawn.

COUNTY BOARD OF APPEALS  
RE: AUG 14 P 2-11

BALTIMORE COUNTY  
DEPARTMENT OF TRAFFIC ENGINEERING  
TOWSON, MARYLAND 21204  
494-3550

STEPHEN E. COLLINS  
DIRECTOR

August 22, 1986

Mr. William Hackett, Chairman  
Board of Appeals  
Office of Law, Courthouse  
Towson, Maryland 21204

SUBJECT: Cycle III - April, 1986  
Item No. 20  
Property Owner: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/4 Eastern Blvd., 65' SW of the centerline of Diamond Point Road  
Existing Zoning: M.L. - I. M.  
Proposed Zoning: B. R. CRITICAL AREA  
Acres: 17.867 acres  
District: 15th Election District

Dear Mr. Hackett:

This office has reviewed the traffic impact study for Diamond Point Plaza prepared by The Traffic Group, Inc. dated July 14, 1986. This study appears to adequately depict the traffic conditions expected with the construction of Diamond Point Plaza. The study has also been approved by the State Highway Administration.

It is my understand that the re-classification has been reduced to 2.37 acres and therefore will not have a major change in traffic volume over the present zoning.

Very truly yours,

*C. Richard Moore*  
C. Richard Moore,  
Deputy Director  
Department of Traffic Engineering

CFM:bza

cc - Mr. Newton Williams, Nolan, Plumbhoff & Williams, Chartered  
204 West Pennsylvania Avenue, Towson, Maryland 21204  
- Ms. Phyllis C. Friedman, People's Counsel

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

William F. Hackett - Chairman  
TO: Appeals Board Date: June 24, 1986

Charles E. "Ted" Burnham  
FROM: Plans Review Chief, Department of Permits & Licenses

SUBJECT: April - October 1986 - Zoning Classification - Cycle III

Item #20 Property Owners: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/4 Eastern Blvd., 65' SW of the c/l of Diamond Point Road  
Existing Zoning: M.L.-I.M.  
Proposed Zoning: B.R. CRITICAL AREA  
Acres: 17.867 Acres  
District: 15th. Election District

Due to the proximity to Back River, Section 516.0 of Council Bill #17-85 dealing with tidal inundation and riverine flood plains should be reviewed for application if the elevations of the property are at an elevation of 10'-0" or less. The Department of Public Works should be able to determine if any part of the property is affected, or if there is in fact a designated tidal flood area.

CEB/vv



SPECIAL NOTE FOR CONSTRUCTION IN TIDAL OR RIVERINE AREAS  
BILL #17-85 BALTIMORE COUNTY BUILDING CODE 1984  
EFFECTIVE - APRIL 22, 1985

SECTION 516.0 A Section added to read as follows:

SECTION 516.0 CONSTRUCTION IN AREAS SUBJECT TO FLOODING

516.1 AREAS SUBJECT TO INUNDATION BY TIDEWATERS:

1. Whenever building or additions are constructed in areas subject to inundation by tides, the building's lowest floor (including basement) shall be not lower than one (1) foot above the 100-year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is more restrictive. These buildings or additions shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure with materials resistant to flood damage.

Areas beneath buildings will not be considered as basements if headroom to underside of floor joists is less than six feet or if enclosure walls are at least 50 percent open.

2. Crawl spaces under buildings constructed in the tidal plain, as determined by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.

3. New or replacement utility systems, including but not limited to water supply, sanitary sewage, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

516.2 RIVERINE AREAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.

1. No structures or additions shall be within the 100-year flood plain of any watercourse. The 100-year flood plain shall be based upon the Federal Flood Insurance Study or the Department of Public Works, whichever is the more restrictive. This determination shall include planned future development of the watershed area.

2. Reconstruction of residential dwelling units shall be governed by Sections 103.0 or 120.0 as applicable, except that rebuilding of residential dwelling units damaged in excess of 50 percent of physical value shall also be governed by the provisions of Subsection 516.1 of this Section.

3. Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 516.1 when damage exceeds 50 percent of physical value.

April 1985

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 14, 1986

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

ooo

Chairman

MEMBERS

Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Newton A. Williams, Esquire  
Holan, Plumbhoff & Williams, Chartered  
204 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Item No. 20 Out of Cycle III  
October - April, 1986  
Petitioner: Charlotte Diffendall  
Reclassification Petition

Dear Mr. Williams:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing out of cycle since the adoption of the current zoning maps. The petition has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which has been scheduled for July 30, 1986 at 9:30 a.m. will be forwarded to you in the future.

Very truly yours,

James E. Dyer/kkb

JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:kkb (MS021)  
Enclosures



Maryland Department of Transportation

State Highway Administration

William K. Hellmann  
Secretary  
Hal Kassoff  
Commissioner

May 6, 1986

Mr. William Hackett, Chairman RE: Baltimore County  
Board of Appeals Item # 20  
County Office Building  
Towson, Maryland 21204

Contract Purchaser:  
Joel D. Pedder  
Location: NW/S Eastern  
Blvd. (Route 150)  
65' SW of the centerline  
of Diamond Point Road  
Existing Zoning: M.L.-  
I.M.  
Proposed Zoning: B.R.  
Acres: 17.867  
District: 15th

ATT: James Dyer

Dear Mr. Dyer:

On review of the submittal of 2/27/86, the State Highway Administration offers the following comments.

The site plan presented for review and comment is very unclear and offers no detail for access to the site.

Any access to the site by way of Eastern Boulevard will require highway improvements to meet S.H.A. standards.

Very truly yours,

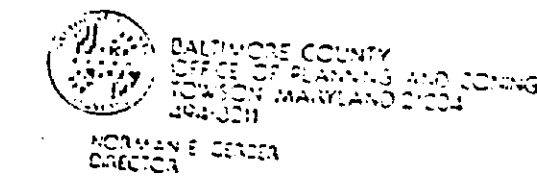
Charles Lee, Chief  
Bureau of Engr. Access Permits  
by: George Wittman

CL-GW:es

cc: J. Ogle

My telephone number is 301-659-1350

Teletypewriter for Impaired Hearing or Speech  
381-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free  
P.O. Box 7-71707 North Calvert St., Baltimore, Maryland 21203-0717



Mr. Arnold Jablon  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

April 23, 1986

(CRITICAL AREA)

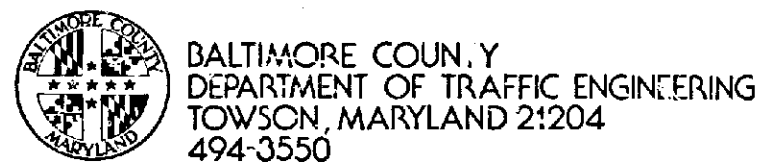
RE: Zoning Advisory Meeting of CYCLE III - Petition  
Item # 20 - CYCLE III  
Petitioner: Charlotte Diffendall  
Location: NW/S Eastern Blvd. 65' SW  
of E of Diamond Point Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- ☒ There are no site planning factors requiring comment.
- ☒ A County Review Group meeting is required.
- ☒ Forward by the Bureau of Public Services.
- ☒ This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- ☒ A record plat will be required and must be recorded prior to issuance of a building permit.
- ☒ The access is not satisfactory.
- ☒ The circulation on this site is not satisfactory.
- ☒ The parking arrangement is not satisfactory.
- ☒ This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- ☒ Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-53 of the Development Regulations.
- ☒ Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- ☒ The amended Development Plan was approved by the Planning Board.
- ☒ Landscaping must comply with Baltimore County Landscape Manual.
- ☒ The property is located in a deficient service area as defined by 811.123-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is:
- ☒ The property is located in a traffic area controlled by a 70' level intersection as defined by 811.123-79, and as conditions change the roadways shall be widened. The Basic Services Areas are:
- ☒ Additional comments:
- ☒ THIS SUBJECT PROPERTY IS REZONED ANY FUTURE DEVELOPMENT OF THE SITE MUST MEET THE REQUIREMENTS OF BILL # 17-85, THE DEVELOPMENT REGULATIONS.
- ☒ THIS SITE IS LOCATED IN THE CHESAPEAKE BEACH CRITICAL AREA. ADDITIONAL COMMENTS WILL BE PROVIDED BY THE COMPREHENSIVE PLANNING DIVISION.

cc: James Hackett, Planning Division  
Eugene A. Rober, Chief, Current Planning and Development



STEPHEN E. COLLINS  
DIRECTOR

May 19, 1986

Mr. William Hackett, Chairman  
Board of Appeals  
Office of Law, Courthouse  
Towson, Maryland 21204

Cycle III  
Item No. 20  
Property Owner: Charlotte Diffendall  
Contract Purchaser: Joel D. Pedder  
Location: NW/S Eastern Blvd., 65' SW of the centerline of Diamond Point Road  
Existing Zoning: M.L.-I.M.  
Proposed Zoning: B.R. CRITICAL AREA  
Acres: 17.867 acres  
District: 15th Election District

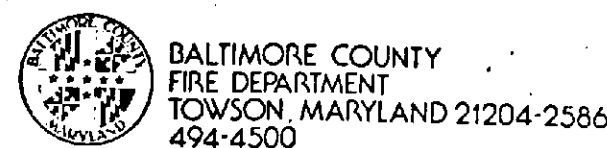
Dear Mr. Hackett:

The present M.L.-I.M. zoning for this site can be expected to generate 180 trips per day, and the proposed B.R. zoning can be expected to generate 8900 trips per day.

Very truly yours,

Michael S. Flanigan  
Traffic Engineer Associate II

MSF:lt



PAUL H. REINCKE  
CHIEF

May 13, 1986

Mr. Arnold Jablon  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: William Hackett  
Chairman, County Board of Appeals

RE: Property Owner: Charlotte Diffendall

Location: NW/S Eastern Blvd. 65' SW of the centerline of Diamond Point Road

Item No.: 20 Zoning Agenda: Cycle III  
4/86 - 10/86

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

(X) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Noted and Approved: John F. O'Neill  
Planning Group Fire Prevention Bureau  
Special Inspection Division

/mb

CHARLOTTE DIFFENDALL

Joel D. Pedder, C.P.

#R-87-39

Item #20, Cycle III, 1986 out  
OF CYCLE  
5-5-86

NW/S Eastern Blvd., 65'  
SW of c/l of Diamond Point Road

15th District

ML-IM to B.R.

17.867 acres

Feb. 28, 1986 Petition filed

Newton A. Williams, Esquire  
204 W. Pennsylvania Ave. (21204)

Counsel for Petitioner

Charlotte Diffendall  
1301 Macton Road  
Street, MD 21154

Petitioner

Joel Pedder  
514 N. Crain Highway  
Glen Burnie, MD 21061

Contract Purchaser

James Earl Kraft  
Baltimore County Board of Education  
940 York Rd. (21204)

Phyllis Cole Friedman

People's Counsel

Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer

Milton & Ida Tancibok  
320-322 Oriole Ave. (21224)

Mrs. Nancy M. Letter  
P. O. Box 18559 (21237)

Russell Mirabile  
400 Mirabile Lane (21224)

Matko Lee Chullin  
408 Oriole Ave. (21224)



County Board of Appeals of Baltimore County

Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180

September 17, 1986

Newton A. Williams, Esquire  
204 W. Pennsylvania Avenue  
Towson, MD 21204

Re: Case No. R-87-39  
Charlotte Diffendall

Dear Mr. Williams:

Enclosed herewith is a copy of the Opinion and Order passed by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart  
Edith T. Eisenhart, Asst. Secretary

Encl.

cc: Charlotte Diffendall  
Joel Pedder  
James Earl Kraft  
Phyllis Cole Friedman  
Milton & Ida Tancibok  
Mrs. Nancy M. Letter  
Russell Mirabile  
Matko Lee Chullin  
Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Bettye DuBois



RECEIVED  
COUNTY BOARD OF APPEALS  
163 SEP 15 A 11:30

PETITION OF CHARLOTTE  
DIFFENDALL (JOEL D. FEDDER,  
CONTRACT PURCHASER)  
NORTHWEST SIDE OF EASTERN  
BOULEVARD, 65' SOUTHWEST OF  
CENTERLINE OF DIAMOND POINT  
ROAD  
15TH DISTRICT  
ML-IM TO LIMITED,  
DOCUMENTED BR

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. R-87-39

PETITIONERS' MEMORANDUM IN SUPPORT  
OF REQUESTED, LIMITED, DOCUMENTED BR

Charlotte Diffendall, legal owner, and Joel D. Fedder, contract purchaser, by Newton A. Williams and Nolan, Plumhoff & Williams, Chartered respectfully present this Memorandum to the Baltimore County Board of Appeals in support of the limited, documented, request reclassification from ML-IM to BR in the above-entitled matter.

STATEMENT OF THE CASE

The petitioners originally filed as a part of the April to October, 1986 petition process asking for a total reclassification to unrestricted BR of just slightly less than eighteen central and rear acres of ML-IM zoning of the thirty-one acre Diffendall property on Eastern Boulevard in Eastern Baltimore County, the frontage already being zoned BR.

At the request of the petitioner the County Council in the public interest and due to pressing time problems of the Petitioners removed the case from the ordinary zoning cycle and directed that it be heard out of cycle.

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NOLAN, PLUMHOFF  
& WILLIAMS,  
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Subsequently, at a hearing before the Board begun on July 30, 1986 the petitioners amended from eighteen acres, minus, of unrestricted BR to a limited, documented request for 2.733 acres of documented BR zoning in two (2) areas in the central portions of the thirty-one acre tract, and submitted a fully documented site plan at that time as to those two acres, illustrative as to the remainder of the tract.

Pursuant to Section 2-58.1 of the Baltimore County Code, the Board immediately suspended the proceedings and referred the matter back to the Planning Staff and Planning Board for a further recommendation as to this limited, documented request.

By resolution dated August 21, 1986, the Planning Board on favorable recommendation of the Planning Staff recommended to the County Board of Appeals that the petitioners limited, documented request be granted.

That favorable Planning Board and Staff recommendation was explained in more detail by a Memorandum from Norman E. Gerber, Director of the Office of Planning and Zoning to the County Board of Appeals dated August 22, 1986, which made a similar recommendation that the request be granted, explaining in detail the reasons why a favorable recommendation was made. Both of these documents, the Planning Resolution of August 21, 1986, and the Director of the Office of Planning and Zoning favorable Memorandum of August 22, 1986, are in the Board's file.

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& WILLIAMS,  
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On Tuesday, August 26, 1986, the Diffendall case was continued before the Board, and detailed testimony was presented by both the petitioner and Baltimore County on the amended, limited BR requested. There were no protestants.

The Petitioner presented testimony consisting of Charlotte Diffendall, one of the owners, who sketched the history of the property; Mr. Joel D. Fedder, a Baltimore area developer, who covered in detail his proposal for Diamond Point Plaza, as well as his part in the 1984 map process; and Mr. George Gavrelis of Daft-McCune-Walker, who covered engineering aspects, as well as points of error and change as to the zoning and area.

In addition, Ms. Marsha Jackson of the Essex Development Corporation appeared and testified in favor of the proposal, as did a number of neighborhood residents.

The only witness presented on behalf of Baltimore County was Mr. James Hoswell, one of the authors of the favorable Director's Report and the favorable Planning Board recommendation.

Baltimore County, Maryland was represented by both the People's Counsel, Phyllis Friedman, Esquire, and the Deputy People's Counsel, Peter M. Zimmerman, Esquire one or both of whom were present at all times during the hearing; and who presented testimony and cross examined various witnesses.

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& WILLIAMS,  
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STATEMENT OF FACTS

All parties agree that the Diffendall property is composed of just slightly in excess of thirty-one acres, and it is bounded on the south by Eastern Boulevard, with extensive frontage thereon, of approximately eighteen hundred feet. The property's western boundary is in part Oriole Avenue, and in part various homes along the southeast side of Oriole Avenue zoned D.R. 16. The property's northern and eastern boundaries are primarily Diamond Point Road, a public road which was improved as two lanes with major shoulders in the latter part of 1970s.

The property is zoned at the present time in two major zones, namely, BR on the frontage to an approximate depth of three hundred ninety to four hundred feet from the centerline of Old Eastern Boulevard, not shown in its present configuration on the operative 200 scale zoning map; with the remainder of the tract of just slightly less than eighteen acres in ML-IM, two portions of which are sought to be reclassified in this case to limited, documented BR.

There are two parcels sought to be reclassified to documented, limited BR, namely, the east parcel of 1.479 acres and the west parcel of 1.254 acres, for a total of 2.733 acres of limited, restricted BR, as opposed to the original request for about eighteen acres of undocumented, unrestricted BR on an open site plan.

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As is shown in various exhibits, including petitioners' exhibit 17, a 1986 County aerial photo and petitioners' exhibits 13 A, B, and C, the property is virtually covered with junked automobiles. The entire property enjoys a non-conforming use status, which was affirmed by the Circuit Court on the rear of the parcel and on a portion of the frontage in Case 74-159-V, including such a finding by this Board; and by the Deputy Zoning Commissioner for a number of non-conforming Eastern Boulevard frontage, automobile related uses in Case No. 82-218-SPH.

The Eastern Boulevard frontage uses (including nine buildings, all of which are proposed to be removed) are dotted in on the site plan, petitioners' exhibit 3, and are shown in detail on the McKee approved site plan dated July 29, 1981, as approved by Baltimore County on September 21, 1983, petitioners' exhibit 11. As for the appearance of these dilapidated, concrete block, older uses with some eleven driveway cuts along the north side of Eastern Boulevard, see the petitioners' photographic exhibits 12 A through 12 U.

In order to build Diamond Point Plaza, Mr. Fedder testified that all of the frontage uses and all of the junked automobiles, including the junked automobiles on a two acre site on the north side of Diamond Point Road, not a part of this petition will have to be completely removed. This removal of this long continued junk yard operation with unsightly

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junked automobiles, with seeping gas, oil and heavy metals was endorsed by Baltimore County's Critical Area Section of the Department of Planning in petitioners' exhibit 10, (namely, a letter by Susan Carrell, the Acting Chief of the Current Planning Division, dated May 20, 1986, as well as a Memorandum by Planner Audrey Thier dated May 20, 1986 as well). The favorable effects of this removal of junk, debris and older uses were confirmed by the Director's recommendation to the Board dated August 22, 1986, and by the Critical Areas/Environmental Effects Report prepared by Dr. Frank Pine of EA Engineering, Science, and Technology, Inc., stipulated to as petitioners' Exhibit 9.

Mr. Guckert's basic traffic conclusions, as contained in his report, petitioner's exhibit 8, were reinforced in a letter from C. Richard Moore, Deputy Director of the Department of Traffic Engineering to the Chairman of the Board of Appeals, dated August 22, 1986. The Moore letter report is in the Board's file, to the general effect that "It is my understanding that the re-classification has been reduced to 2.37 acres and therefore will not have a major change in traffic volume over the present zoning." Mr. Guckert also explained in his testimony, report and plat the extensive widening and improvements planned for Eastern Boulevard and Diamond Point Road.

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We believe that everyone involved with the case on all sides agrees that it would be a vast improvement over the present situation if the junk yards and older Eastern Boulevard uses were removed and Diamond Point Plaza substituted, but the question is was the action of the Baltimore County Council in zoning the property BR to a depth of approximately three hundred ninety to four hundred feet from an incorrectly located Eastern Boulevard, with the remainder of the tract being placed in a ML-IM zone on the 1984 zoning maps error. We emphatically assert that it was and is error to so zone the property.

DISCUSSION OF MAP ERROR AND MAP  
CHANGES CONCERNING THE DIFFENDALL PROPERTY

The petitioners' testimony from Mr. Gavrelis, Mr. Fedder, Mrs. Diffendall, Mr. Guckert, and Ms. Jackson of the Essex Development Corporation, all show that Council did err in dividing the Diffendall property as it did on the 1984 zoning maps between BR on the frontage and ML-IM in the back.

First of all, the property has been a junk yard since the 1930s with older, outdated uses on the frontage, and it has never really received a good and close zoning look, probably since everyone just assumed that the junk yard would continue with the related frontage uses.

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A brief sketch of the zoning history, according to the testimony, is that from 1945 to 1955 the property was zoned in an "E" commercial zone, the sole commercial zone, to a depth of one hundred fifty feet along the frontage, and a cottage "A" zone in the back. Under the 1948 Zoning Regulations, a special permit was required in a "G" heavy industrial zone in order to legitimately operate a junk yard, and thus, there is some question whether the cottage "A" zoning in the rear was then correct if the junk yard was to be upgraded.

On March 30, 1955, the basic Baltimore County Zoning Regulations as we know them today were adopted. By operation of Section 100.3 thereof, still in effect, "E" commercial was automatically transformed to BL, manifestly incorrect for the automobile related frontage uses, which uses required and require today BR zoning; and cottage "A" was automatically converted to R.6, again incorrect if there was any thought of regulating and cleaning up the junk yard operation pursuant to a special exception, which special exception required a M.H. base zone.

Again, according to Mr. Gavrelis, in 1962, the Comprehensive Zoning Map for the Essex area divided the property between BR on the southwest and southeast corners, with some RA, residence, apartments, zoning along Oriole Avenue. The bulk of the property, on the 1962 zoning map, was

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